

# FOREIGN POLICY ASSOCIATION

## Information Service

VOL. IV—NO. 9

JULY 6, 1928

### CONTENTS

	Page
Early Attempts at Codification and Accomplishments of Rio Jurists .....	189
Committee No. II—The Status of Aliens .....	191
Treaties .....	192
Diplomatic Agents .....	195
Consular Agents .....	197
Maritime Neutrality .....	199
Asylum .....	202
Rights and Duties of States in the Event of Civil War .....	204
Committee No. III—Private International Law and Legislative Uniformity ...	205
Committee No. IV—Communications .....	207
Committee No. VI—Economic Problems .....	214
Committee No. V—Intellectual Cooperation .....	219
Committee No. VII—Hygiene and Social Problems .....	220
Committee No. VIII—Progress of Past Treaties, Conventions and Resolutions	221

Published bi-weekly by the FOREIGN POLICY ASSOCIATION, 18 East 41st Street, New York, N. Y. JAMES G. McDONALD, Chairman; RAYMOND LESLIE BUELL, Research Director; WILLIAM T. STONE, Editor. Research Assistants: HERBERT W. BRIGGS, DOROTHY M. HILL, E. P. MACCALLUM, HELEN H. MOORHEAD, M. S. WERTHEIMER, AGNES S. WADDELL, NATALIE BROWN. Subscription Rates: \$5.00 per year; to F. P. A. members \$3.00; single copies 25c.

## The Sixth Pan American Conference, Part II.

**P**ART I of this report, published April 27, 1928, reviewed the major political questions which came before the Pan American Conference—those involving intervention, aggression, and arbitration. Part II, this section, reviews the work of the Conference in further non-political matters. Analysis of the resolutions adopted at Havana reveals a number of noteworthy accomplishments affecting the codification of international law, communications (including aviation), certain economic and agricultural problems, and intellectual cooperation.

In some cases the Conference took direct action, such as the formulation of eight conventions codifying international law. In other cases it authorized the establishment of expert machinery to consider problems with which, as a diplomatic conference, it was not competent to deal. Fourteen such conferences are to be called.<sup>1</sup>

One of the most important branches of the work of the Sixth Pan American Conference had to do with the codification of in-

ternational law. In view of the absence of any code defining the rules of international law, a demand has arisen for some authoritative statement of what these rules are. This movement has been particularly strong on the American continent. In 1847, 1861 and 1867, Latin-American conferences for the codification of international law had been held at Lima, Peru, without the participation of the United States.<sup>1a</sup> In 1889 a number of American republics signed agreements concerning private international law at Montevideo. Eight conventions were signed, dealing with international civil law, commercial international law, penal international law, laws of procedure, literary and artistic property, trade-marks, patents and the exercise of the liberal professions.<sup>2</sup>

Marked impetus to the codification movement followed the establishment of the Pan American Conferences. At the Second Con-

1. Cf. Part I, p. 61. (F. P. A. Information Service, Vol. IV, No. 4.)

1a. The text is printed in Portuguese, in Espinola, E. and Dos Reis, A., *A Codificação Do Direito Internacional, Pandectas Brasileiras (Separata)*, p. 10. For European developments, see Strupp, K., *Wörterbuch des Völkerrechts und der Diplomatie*, Vol. I, p. 638-41.

2. The text of these conventions is printed in Portuguese in Espinola, E. and Dos Reis, A., cited, p. 16.

ference, held in 1901, a resolution was passed asking authority to appoint a committee of five American and two European jurists, for the purpose of drawing up codes of public and private international law. The convention was ratified only by Bolivia, El Salvador and Guatemala and it did not, therefore, enter into effect.<sup>3</sup>

#### EARLY ATTEMPTS AT CODIFICATION OF INTERNATIONAL LAW

The Third Conference, held in 1906, approved the convention<sup>4</sup> providing for the appointment of an International Committee of Jurists—one from each American government—to prepare a draft Code of Private International Law and of Public International Law to regulate the relations between the nations of the American continent. This convention was ratified by fifteen states, including the United States.

The first session was to take place in Rio de Janeiro in 1907. Owing to delay in ratification, however, the Committee did not meet in Rio until June, 1912. At that time the government of Brazil submitted to the Committee a draft Code of Public International Law prepared by Mr. Epitacio Pessoa, (now a member of the Permanent Court of International Justice), and a draft Code of Private International Law prepared by another Brazilian jurist, Mr. Lafayette R. Pereira. Mr. Alvarez, a delegate from Ecuador, Chile and Costa Rica, also presented a book entitled "Codification of International Law."<sup>5</sup>

The Committee found the task confronting it so large that it decided to divide the proposed codification between six commissions which should later meet at six American cities.<sup>6</sup>

While some work was performed by the commissions,<sup>7</sup> the second meeting of the jurists, scheduled for 1914, did not take place because of the outbreak of the World War. The subject again came up at the

Fifth Pan American Conference at Santiago in 1923, when it was decided to re-establish the Committee of Jurists created in 1906. The Conference requested each government to appoint two delegates to the Committee of Jurists which was to meet in Rio de Janeiro in 1925. The question then arose whether this Committee should attempt to bring about the complete codification of international law or whether it should proceed step by step, by means of conventions upon different subjects. Believing that complete codification was impracticable, the Conference adopted a resolution in favor of "gradual and progressive" codification.

On January 2, 1924, the Governing Board of the Pan American Union asked the American Institute of International Law to prepare draft projects to be submitted to the Rio Committee. The officers of the Institute drafted projects based upon Alvarez's work on codification. Submitted to a meeting of the American Institute at Lima, these projects were revised, with the result that the Institute adopted the text of thirty projects of "American" international law. Many of these projects concerned themselves with declarations of principles—such as the "Declaration of Pan American Unity and Cooperation," and "Fundamental Bases of International Law." Others concerned themselves with more practical subjects, such as extradition and freedom of transit, and still others with vital political questions.<sup>8</sup>

#### PROJECTS APPROVED BY THE RIO COMMITTEE OF JURISTS—1927

In March, 1925, the Governing Board transmitted these projects to the governments in order that they might be submitted to the Committee of Jurists. This Committee finally convened at Rio de Janeiro in April, 1927—more than a year after the scheduled date—delegates being present from seventeen American states. The Committee approved twelve projects of public international law as follows:

1. Fundamental Bases of International Law
2. States: Existence, Equality and Recognition

3. Carbonell, N. *Las Conferencias Internacionales Americanas*, p. 158.

4. *Ibid.*, p. 264.

5. The text of both codes is printed in Espinola, E. and Dos Reis, A., *cited*, p. 69, 121.

6. Espinola, E. and Dos Reis, A., *cited*, p. 165 ff. Cf. also Bustamante, *La Comision de Jurisconsultos de Rio de Janeiro y el Derecho Internacional*. Chapters III and IV.

7. Bustamante, A., *cited*, Chap. V.

8. Cf. Part I, p. 64. (F. P. A. *Information Service*, Vol. IV, No. 4.) Also, American Institute of International Law, *Informal Conversations of Lima, December 20-31, 1924*; and Pan American Union, *Codification of American International Law*. These conventions are criticized by J. L. Briery on the ground that they emphasize rights rather than duties, etc., *British Yearbook of International Law*, 1926, p. 14.

3. Status of Aliens
4. Treaties
5. Exchange of Publications
6. Interchange of Professors and Students
7. Diplomatic Agents
8. Consuls
9. Maritime Neutrality
10. Asylum
11. Obligations of States in Event of Civil War
12. Pacific Settlement of International Conflicts

The Committee excluded other projects involving political considerations.<sup>9</sup>

The Rio jurists also drew up a Code of Private International Law, based on the work of Dr. Antonio de Bustamante of Cuba.

#### RECOGNITION OF GOVERNMENTS ON THE AMERICAN CONTINENT

The draft Convention on States (No. 2) laid down principles controlling the recognition of governments on the American continent. As far as Central American countries are concerned, the United States has since 1923 departed from the principle of *de facto* recognition and, in accordance with the principles adopted at the Conference of Central American States, refuses to recognize governments constituted as a result of revolution.<sup>10</sup>

In defining the rules of recognition at Rio de Janeiro, the American jurists indirectly at least were obliged to consider whether to embody this recognition policy of the United States in the proposed Convention on States. The original draft provided that a government *de jure* had the right to be recognized, and that a government *de facto* might be recognized upon fulfilling certain conditions. During the debate a number of delegates called attention to the clause in regard to *de jure* governments. Some declared that this clause would "give a state the right to determine if another government really was *de jure*;" i. e., whether it was legitimately constituted. This would make a state an "internal censor," and lead to intervention, causing "the greatest peril."<sup>11</sup>

Mr. James Brown Scott of the United States said that, under the existing text, in

the case of the formation of a new government, all the American republics had the right to determine whether or not the government was *de jure*. In order to prevent governments from exercising such a right, therefore, it was well to withdraw the phrase of which he was the author.<sup>12</sup>

On the other hand, Mr. Maurtua, of Peru, declared that determination of the legitimacy of a government should not be regarded as "intervention." Solidarity in the "correct functioning of our institutions" should be established.

At the suggestion of the United States delegation, a clause was finally adopted as follows:

"A Government is to be recognized whenever it fulfills the following conditions:

"1. Effective authority with a probability of stability and consolidation, the orders of which, particularly as regards taxes and military service, are accepted by the inhabitants.

"2. Capacity to discharge pre-existing international obligations, to contract others, and to respect the principles established by international law."<sup>13</sup>

The above clause was embodied in the Convention on States placed before the Havana Conference, but postponed until the next conference at Montevideo on account of the intervention question. It may be argued that the adoption of the above principles would invalidate the present recognition policy of the United States toward Latin America.

#### RIO PROJECTS REFERRED TO COMMITTEES II AND III AT HAVANA

These various projects, prepared by the Rio jurists, were placed on the agenda of the Havana Conference when it met in January, 1928, and were referred to two commissions: (1) Committee No. II on Public International Law and Frontier Police, and (2) Committee No. III on Private International Law and Legislative Uniformity.

As a result of the deliberations of Committee No. II, the following conventions were adopted:

1. Convention on the Status of Aliens
2. Convention on Treaties

9. *Comision Internacional de Jurisconsultos Americanos: Reunion de 1927*, Vol. II, p. 159.

10. Cf. Buell, R. L. "The United States and Latin America." (F. P. A. Information Service, Vol. III, Supp. No. 4, p. 80.)

11. Cf. the remarks of Messrs. Anderson, James Freyre, Podesta Costa, *Comision*, cited, Vol. II, p. 145.

12. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 144, 147.

13. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 149. At the adoption of the amendment offered by the United States delegates, Dr. Podesta Costa exclaimed, "It is a great democratic victory."

3. Convention on Diplomatic Officers
4. Convention on Consular Agents
5. Convention on Maritime Neutrality
6. Convention on the Rights and Duties of States in case of Civil Wars
7. Convention on Asylum

No action was taken on the Rio projects relating to Fundamental Bases of International Law or to States: Existence, Equality and Recognition, because of the intervention questions discussed in Part I of this report. The draft conventions in regard to exchange publications and interchange of professors and students were referred to the Committee on Intellectual Cooperation.<sup>14</sup>

#### CONVENTION ON THE STATUS OF ALIENS

The status of aliens involves on the one hand the treatment of immigrants, and on the other the whole question of state responsibility for losses to aliens in the event of damage caused by violence, denial of justice, or otherwise. The status of aliens has given rise to numerous controversies in the history of international relations. While the principle is being generally adopted that aliens are entitled to the same civil rights as citizens, there is as yet no agreement as to the extent to which a state is responsible for damages to aliens.

At the Santiago Conference of 1923, the subject of "rights of aliens and of pecuniary claims" was on the agenda. Ten Latin-American states supported a proposal that a foreigner could not make claims against a state through diplomatic channels "except in cases where there may have been an evident denial of justice" by the courts, "abnormal delay or evident violation of the principles of international law."<sup>15</sup>

At the suggestion of the United States, the question was referred to the Rio jurists. In the interval, the American Institute of International Law drafted a project on Responsibility of Governments, which declared that governments were responsible for damages only when they had been negligent in suppressing acts disturbing order, and a project on Diplomatic Protection rec-

ognizing the right to accord such protection in case of denial of justice, undue delay, or violation of the principles of international law.<sup>16</sup>

#### STATE RESPONSIBILITY AND THE RIGHT OF INTERPOSITION

During the Rio Conference, the jurists representing the United States requested the conference not to consider the question of state responsibility as the subject lent itself to "tendencious interpretations with relation to pending cases in American policy."<sup>17</sup> They proposed that the question be referred to the Havana Conference. Consequently the Rio jurists did not act on this important point.

At the Havana Conference, Dr. Podesta Costa of Argentina presented a project on state responsibility, stating that diplomatic protection could be employed only when the local institutions did not function.<sup>18</sup> Dr. G. Gutiérrez of Cuba also presented a project on the Right of Interposition, stating that no state could exercise this right except in the case of denial of justice by the courts or when the authorities had materially impeded the exercise of alien rights before the courts. Denial of justice existed when the courts "maliciously impeded the foreigner in the exercise of his rights, or gravely violated, without further appeal, the fundamental rules of justice." No state was responsible for the errors of judgment of its tribunals.<sup>19</sup> Neither of these projects, involving the whole question of diplomatic protection, was put to the vote.<sup>20</sup>

The Conference adopted a convention, however, defining the status of aliens in certain particulars as follows:

#### STATUS OF ALIENS<sup>21</sup>

##### CONVENTION

*Article 1:* States have the right to establish by their laws the conditions governing the entry and residence of foreigners within their territories.

*Article 2:* Foreigners are subject as are nationals to local jurisdiction and laws, observing the limitations stipulated in conventions and treaties.

16. Pan American Union, *Codification of American International Law*, p. 54.

17. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 150.

18. For the text see the *Diario de la Sexta Conferencia Internacional Americana*, p. 330.

19. For the text, see *Diario*, p. 416.

20. Cf. *Diario*, p. 566.

21. This convention and the following ones are unofficial translations of the Spanish text as given in the *Revista de Derecho Internacional*, March, 1928.

14. Cf. Part I, p. 75. (F. P. A. *Information Service*, Vol. IV, No. 4.) for the action on Pacific Settlement. Footnote 106, in Part I, p. 72, incorrectly stated that the Conference adopted a treaty in regard to Recognition.

15. International Conference of American States, *Report of the Delegates of the United States of America to the Fifth International Conference*, 1923, p. 138.



*Article 3:* Foreigners may not be obliged to render military service; but those who are domiciled, unless they prefer to leave the country, may be compelled under the same conditions as nationals to render police, fire or militia service for the protection of the locality and of their homes against natural catastrophes or dangers not caused by war.

*Article 4:* Foreigners are obliged to make ordinary or extraordinary contributions as well as forced loans provided such measures apply to the general populace.

*Article 5:* States should extend to foreigners domiciled or in transit in their territory all the individual guaranties extended in favor of their own nationals and the enjoyment of the essential civil rights without prejudice in so far as concerns foreigners of the legal prescriptions relating to the extension and control of the exercise of said rights and guaranties.

*Article 6:* States may for reasons of public order or safety expel the foreigners domiciled, resident, or merely in transit in their territories.

States are obliged to receive those nationals who, expelled from other countries, return to their territory.

*Article 7:* The foreigner should not participate in the private political activities of the citizens of the country in which he finds himself. Should he do so he shall be subject to the sanctions provided in the local legislation.

*Article 8:* The present Convention does not affect obligations previously acquired by the contracting parties by virtue of international agreements.

*Article 9:* The present Convention after being signed shall be submitted for the ratifications of the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese in the city of Habana, February 20, 1928.

In signing the treaty the United States delegation made an express reservation to Article 3, which refers to the military service of aliens in time of war.

Apparently this reservation was made in view of the fact that during the World War the United States required certain classes of aliens to register for the draft, and those who had declared their intention of becoming citizens were required to serve in the

army, unless exempted under treaties between the United States and their former country.

## CONVENTION ON TREATIES

The Convention on Treaties was originally drawn up by the Rio jurists and in the main followed the proposed Pessôa Code of 1912. During the Rio discussion, the Haitian delegate, apparently having in mind the treaty which the United States obliged his government to sign in 1915, proposed the adoption of the principle that treaties should be freely consented to.<sup>23</sup> The amendment was later withdrawn after a delegate stated that if a state did not wish to sign a treaty it did not have to do so.

Likewise the doctrine of *rebus sic stantibus* came into the discussion.<sup>24</sup> Article 220 of the Pessôa Code had provided that states could decline "to carry out a treaty having an indeterminate duration when the facts and circumstances which served as its base were modified in a manner which could not have been foreseen, and were of such importance that its execution became contrary to the nature of things, incompatible with the existence or dignity of the parties or ruinous to its wealth and commerce." Had this principle been embodied in a convention, Bolivia and Peru might have been able to raise the question of the validity of the treaty of October 20, 1904, by which Bolivia ceded to Chile her seaports on the Pacific.

The Rio jurists adopted an article defining the conditions under which a treaty ceased to be valid (Article 14 of the convention printed below), but not going as far as some delegates wished. In the discussion the representative of Peru declared that "treaties are not perpetual." He referred to Article 19 of the Covenant of the League of Nations, which provides for reconsideration of treaties which have become inapplicable, and he asked that the article before the Rio jurists be extended. But the delegate of Chile protested that "neither directly nor indirectly" could they refer to any "pending

23. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 195. Cf. also American Institute of International Law, *Informal Conversations of Lima*, p. 40.

24. See Williams, J. F., *The Permanence of Treaties*, (American Journal of International Law, January, 1928, p. 89.)

political question.”<sup>25</sup> Thus, apparently because of the Tacna-Arica dispute, the Rio jurists failed to take any action on the principle laid down in Article 220 of the Pessôa Code.

#### DOCTRINE OF *REBUS SIC STANTIBUS* DEBATED AT HAVANA

This question of *rebus sic stantibus* was again raised at Havana. In reporting upon the treaty project, Dr. Ferrera, the Cuban Ambassador to Washington, declared that “a treaty was always a circumstantial act,” and that no state could be “compelled to commit suicide.” The American states, he argued, should not be deprived of the right of *rebus sic stantibus*, which was applied in all other continents. The difficulty with the doctrine that treaties lapse with fundamental changes was that either party could arbitrarily apply the doctrine to its own advantage. To avoid this, Dr. Ferrera proposed that if one party did not agree that the treaty had thus lapsed, the question should be referred to arbitration.<sup>26</sup>

The Bolivian delegation, again concerned over its treaty relations with Chile, pressed the same demand. Referring to Article 19 of the League Covenant, a Bolivian delegate stated that “international treaties are not, nor cannot be, eternally intangible. . . .” After the failure of negotiations the matter should be placed at the request of either party before a Commission of Investigation.<sup>27</sup>

The proposals were referred to a sub-committee of Committee No. II, which prepared an article (Article 15) to the effect that a permanent treaty of non-continuous application may be declared void by arbitration. The delegate of Bolivia contended that the principle should apply to all treaties, “whatever their character or denomination.” Despite this objection Article 15 was approved.<sup>28</sup> Bolivia made a reservation reiterating its views on the doctrine of *rebus sic stantibus*.

Difference of opinion also occurred over the question of the guarantee of a treaty by a third state. Mexico and Salvador made reservations in regard to the article as adopted. During the debate Dr. Castro, of Salvador, moved that the right of a state to intervene as the guarantor of a treaty should be merely the right to put in action methods to bring about the pacific solution of the dispute. His amendment was defeated by a vote of fourteen to three.<sup>29</sup> It is not clear what treaties are envisaged by this clause, unless it be the Central American Treaty of February 7, 1923, which in one sense may be said to be under the guarantee of the United States.

#### PROVISION RELATING TO THE “CADUCITY” OF TREATIES

Probably the most interesting provision in the convention is that contained in Article 15 relating to the “caducity” of treaties. What is meant by permanent treaties not of continuous application? The report of the sub-committee appointed to consider the draft declared that they were treaties which contemplated subsequent acts, subject to special conditions which might or might not present themselves.<sup>30</sup>

It is possible that the treaties by which the United States has the right to intervene in the affairs of Cuba and Haiti, under certain circumstances, fall within this category.<sup>31</sup> For some time Cuba has been endeavoring to relieve itself of the obligations imposed by the so-called Platt Amendment,<sup>32</sup> and the adoption of the Convention on Treaties by the United States may make it possible for her to refer the question of the “caducity” of this treaty to arbitration. However, the wording of Article 15 in regard to the obligation to arbitrate remains vague.

In its report on the Conference the delegation of the United States expressed the opinion that Article 18 of the convention

29. *Diario*, p. 511.

30. *Diario*, p. 513.

25. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 215.

26. See his report, *Diario*, p. 233; Dr. Gutiérrez' report, *Diario*, p. 253, 283.

27. Revision de Tratados, *Diario*, p. 363.

28. *Diario*, p. 515.

31. Treaty of May 22, 1903, between Cuba and the United States; Treaty of September 16, 1915, between Haiti and the United States. It is conceivable also that certain provisions of the Treaty of November 18, 1903, between Panama and the United States, and of August 5, 1914, between Nicaragua and the United States, may fall into this category.

32. See F. P. A. *Information Service*, Vol. III, No. 23, p. 364.

was drafted "expressly in order that the rules of this general convention could in any case be applied in opposition to treaties, either bilateral or multilateral, previously concluded among the contracting states." It is possible that differences will arise as to whether Article 18 safeguards, for example, the permanent treaty between Cuba and the United States from the operation of Article 15.

### TREATIES CONVENTION

*Article 1:* Treaties will be concluded by the competent authorities of the States or by their representatives, according to their respective internal law.

*Article 2:* The written form is an essential condition of treaties. The confirmation, prorogation, renewal or extension, shall also be made in writing unless otherwise provided.

*Article 3:* The authentic interpretation of treaties, when considered necessary by the contracting parties, shall likewise be in writing.

*Article 4:* Treaties shall be published immediately after the exchange of ratifications.

Failure to fulfill this international obligation shall not affect the validity of the treaties nor the enforceability of the obligations they contain.

*Article 5:* Treaties are obligatory only after ratification by the contracting States, even though this condition is not stipulated in the full powers of the negotiators or in the treaty itself.

*Article 6:* Ratification must be given unconditionally and must embrace the entire treaty. It must be made in writing, in conformity with the legislation of the State.

If the ratifying State makes reservations to the Treaty it shall become effective when the other contracting party upon being informed of the reservations, expressly accepts them, or not having formally rejected them takes action which implies their acceptance.

In international treaties effected between various States, the reservation made by one of them in the instrument of ratification only affects the application of the respective clause in the relations of the other contracting States with the State which makes the reservation.

*Article 7:* Refusal to ratify or the formulation of a reservation are actions inherent to national sovereignty, and as such constitute the exercise of a right which violates no international stipulation or good form. The refusal shall be communicated to the other contracting parties.

*Article 8:* Treaties shall become effective from the date of exchange or deposit of ratification unless some other date be agreed upon through an express provision.

*Article 9:* The acceptance or non-acceptance of the provisions of a treaty in favor of a third State not a contracting party, depends exclusively upon the decision of the latter.

*Article 10:* No State can relieve itself of the obligations of a treaty or modify its stipulations except by the agreement, secured by peaceful means, of the other contracting parties.

*Article 11:* Treaties shall continue in effect even though the internal constitution of the contracting States has been modified. If the organization of the State should change in such a manner as to render impossible the execution of treaties, because of division of territory or other like reasons, treaties shall be adapted to the new conditions.

*Article 12:* Whenever a treaty becomes impossible of execution through the fault of the party entering into the obligation, or through circumstances which at the time of celebration were under control of this party and were unknown to the other party, the former shall be responsible for damages resulting from the non-execution.

*Article 13:* The execution of a treaty may, by express stipulation or by virtue of special agreement, be placed wholly or in part under the guaranty of one or more States. The guarantor State cannot intervene in the execution of the Treaty except by virtue of a request by one of the interested parties and when the conditions under which intervention was stipulated exist; and when doing so only such measures may be employed as are sanctioned by international law, and without other requirements of greater scope than those of the State which has been guaranteed.

*Article 14:* Treaties cease to be effective:

(a) When the stipulated obligation has been fulfilled.

(b) When the length of time for which it was made has expired.

(c) When the resolutive condition has been fulfilled.

(d) By agreement between the parties.

(e) By renunciation of the party exclusively benefited by the Treaty.

(f) By denunciation, total or partial, if agreed upon.

(g) When it becomes impossible of execution.

*Article 15:* The caducity of a treaty may also be declared when it is permanent and not of continuous application, provided the causes which originated it have disappeared and when it may logically be deduced that they will not reappear in the future. The contracting party which alleges this caducity, upon not obtaining the consent of the other party or parties, may appeal to arbitration, the contracted obligation to remain in force if a favorable decision is not obtained and pending the issuance of the decision.

*Article 16:* Obligations contracted in treaties shall be sanctioned in cases of non-fulfillment and when all diplomatic negotiations have been exhausted without success, by decision of a Court of

Justice or by an Arbitral Tribunal, within the limits and according to the procedure in use, at the time in which the infraction is alleged.

*Article 17:* Treaties, whose denunciation has been agreed upon and those which establish rules of International Law, may not be denounced except in accord with their stipulations.

In the absence of such stipulations, the Treaty may be denounced by any contracting State, which shall notify the other parties of this decision, provided it has fulfilled all the obligations contained therein.

In this event the Treaty shall be without effect in so far as the denouncing State is concerned one year after the last notification and shall continue in effect with respect to the other parties, if such exist.

*Article 18:* Two or more States may agree that their relations are to be governed by rules other than those established in general conventions celebrated by them with other States.

This precept is applicable not only to future Treaties but also to those in effect at this time.

*Article 19:* A State which shall not have taken part in the making of a Treaty may adhere to the same if none other of the contracting parties be opposed, its adherence being communicated to all. Adherence shall be considered, unless it be made with the express reservation of ratification.

*Article 20:* The present Convention does not affect obligations previously acquired by the contracting parties as a result of international agreement.

*Article 21:* The present Convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese in the city of Habana, February 20, 1928.

#### *Reservation of the Delegation of Mexico*

The Mexican Delegation without taking into account the votes which it desires to make against certain articles will sign the several Conventions of Private International Law (Sic.) approved, making a single reservation with respect to Article 13, which it does not accept in the Convention on Treaties.

#### *Reservation of the Delegation of El Salvador*

The Delegation of El Salvador not only opposes its negative vote to Article 13 but likewise votes negatively on the Convention and does not sign it.

#### *Reservations of the Delegation of Bolivia*

In the opinion of the Delegation of Bolivia the non-executability to which clause G of Article 14 refers is protested in the following cases among others:

1. When the facts and circumstances which gave it origin or served as its base have been fundamentally modified;
2. When its execution becomes contrary to the nature of things;
3. When it becomes incompatible with the existence of a State or with its independence or dignity;
4. When it becomes ruinous to its wealth or its commerce.

The reservation of Bolivia on Article 15 has reference to the fact that not only treaties of intermittent application, as is stated in that article, but likewise all kinds of treaties—whatever may be their character or denomination—even those which are called definitive, are susceptible of caducity, inasmuch as like all human conventions they are susceptible of error, since nothing is immutable and eternal.

### CONVENTION ON DIPLOMATIC AGENTS

While this convention grants certain immunities to diplomatic agents, it does not employ the word "extraterritoriality" in this connection. In drafting the convention at Rio, a number of jurists expressed the opinion that in order to avoid invidious distinctions, especially among the American states, the rank of Ambassador should be suppressed.<sup>33</sup>

An amendment to the convention to the effect that diplomatic agents be divided into the two categories of Ministers and Chargés d'Affaires failed of adoption by a vote of eight to eight, apparently because of the fear that American diplomats in European ports would, under the amendment, be placed in a position of inferiority in relation to other diplomats.<sup>34</sup> Nevertheless, the Committee of Jurists voted a recommendation asking that diplomatic agents be ranged into their two categories.

The convention adopted at Havana, as to diplomatic agents, follows:

### DIPLOMATIC OFFICERS CONVENTION

*Article 1:* The States have the right to be represented before one another by diplomatic officers.

<sup>33.</sup> *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 242, ff.

<sup>34.</sup> *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 248.



## SECTION I

*Article 2:* Diplomatic officers are divided into ordinary and extraordinary classes.

Those which represent the Government of one State before that of another in a permanent manner are ordinary.

Those charged with a special Mission or those who are accredited in order to represent the Government at conferences, congresses or other international organisms, are extraordinary.

*Article 3:* Diplomatic officers have the same rights, prerogatives, and immunities whatever may be their category except in respect to precedence and etiquette.

Etiquette depends upon general diplomatic usage and upon the laws and regulations of the country before which the diplomat is accredited.

*Article 4:* In addition to the functions indicated in his credentials ordinary diplomatic officers have attributions which may be conferred upon them by the laws or decrees of the respective countries. They should exercise these attributions without entering into conflict with the laws of the country where they are accredited.

*Article 5:* Every State may be represented by one single officer before one or more Governments.

Several States may be represented before another by a single diplomatic officer.

*Article 6:* Diplomatic officers so authorized by their Governments may with the consent of the local Government and at the request of a State not represented before it by an ordinary officer undertake before that Government the temporary or accidental protection of the interests of said State.

*Article 7:* States are free to elect their diplomatic officers but they may not invest with these functions nationals of the State in which the Mission is to serve without the consent of that State.

*Article 8:* No State may accredit its diplomatic officers before other States without previously arranging with them.

The States may refuse to accept a diplomatic officer from the others or having already accepted him may request his withdrawal without being obliged to state the reasons for such action.

*Article 9:* Extraordinary diplomatic officers enjoy the same prerogatives and immunities as are enjoyed by ordinary officers.

## SECTION II

*Article 10:* Each Mission shall have the personnel fixed by its Government.

*Article 11:* When diplomatic officers absent themselves from the place where they exercise their offices or find themselves unable to fulfill them, they shall be substituted temporarily by the person designated by their Government.

## SECTION III

*Article 12:* Foreign diplomatic officers may not participate in the internal or external politics of the State in which they fulfill their duties.

*Article 13:* Diplomatic officers should address their official communications to the Minister of Foreign Affairs or to the Secretary of State of the country to which they are accredited. Communications to other authorities shall likewise be made through the medium of said minister or secretariat.

## SECTION IV

*Article 14:* Diplomatic officers shall be inviolate in their persons and private and public residences and their possessions. This inviolability shall extend:

- (a) To all classes of diplomatic officials;
- (b) To all official personnel of the diplomatic Mission;
- (c) To the members of the respective families who live under the same roof;
- (d) To the records, papers, and correspondence of the Mission.

*Article 15:* States should extend to diplomatic officials every facility for the fulfillment of their duties and especially to the end that they may freely communicate with their Governments.

*Article 16:* No official or judicial or administrative agent of the State where the diplomatic official is accredited may enter his residence or the premises of the Mission without his consent.

*Article 17:* Diplomatic officials are obliged to deliver to the competent local authorities which so demand the person accused or condemned of common crime who shall have taken refuge in the Mission.

*Article 18:* Diplomatic officials are exempt in the State to which they are accredited:

- (1) From all personal taxes whether national or local;
- (2) From all territorial taxes on the building of the Mission when it belongs to the respective Government;
- (3) From customs duties on objects for the official use of the Mission or the personal use of the diplomatic official or his family.

*Article 19:* Diplomatic officials are exempt from all civil or criminal jurisdiction of the State to which they are accredited and may not, except when duly authorized by their Governments to waive immunity, be tried and judged save by the tribunals of their own State.

*Article 20:* The immunity to jurisdiction is inherent in diplomatic officials in so far as their official actions are concerned. With respect to others, however, it may not be invoked except while their official character obtains.

*Article 21:* Persons enjoying immunity from jurisdiction may refuse to appear as witnesses before the territorial courts.

*Article 22:* Diplomatic officials enter upon the enjoyment of their immunities from the moment they pass the frontier of the State in which they are to serve and make known their position.

The immunities are effective during the time the Mission is suspended and even after it terminates for the time necessary for the diplomatic official to withdraw with the Mission.

*Article 23:* Persons forming the Mission likewise shall enjoy the same immunities and prerogatives in the States which they cross in order to reach their post or return to their country or in which they accidentally find themselves during the exercise of their offices and to whose Government they have made known their position.

*Article 24:* In the event of the death of a diplomatic official his family shall continue to enjoy the immunities for a reasonable period until it leaves the State.

#### SECTION V

*Article 25:* Diplomatic officials cease in their Mission:

(1) Upon the official notification by the Government of the official to the other Government that the diplomat has ceased to hold his office.

(2) By the expiration of the period fixed for the fulfillment of the Mission.

(3) By the solution of the matter should the Mission have been created to deal with a special question.

(4) By the delivery of the passports to the official by the Government before which he is accredited.

(5) By the request for his passports made to that Government by the official.

In the cases above mentioned a reasonable period shall be conceded to the diplomatic official, to the official personnel of the Mission and to their respective families to abandon the territory of the State, it being the duty of the Government before which the official had been accredited to see that during this period none of them is molested nor harmed in his person or possessions.

The death or the resignation of the Chief of State as well as the change of Government or of political régime shall not bring to an end the Mission of diplomatic officials.

*Article 26:* The present Convention does not affect obligations acquired previously by the contracting parties by virtue of international agreements.

*Article 27:* The present Convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned Plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese in the city of Habana, February 20, 1928.

#### CONVENTION ON CONSULAR AGENTS

The convention adopted as to consular agents follows:

#### CONSULAR AGENTS CONVENTION

*Article 1:* States may appoint in the territories of other States with their express or tacit consent consuls who therein represent and defend their commercial and industrial interests and render to their nationals the aid and protection which they lack.

*Article 2:* The form and requisites for their nomination and the classes and categories of consuls shall be regulated by the internal law of the respective State.

*Article 3:* Without the consent of the State where he is to serve one of its nationals cannot be authorized as a consul. The granting of the exequatur implies authorization.

*Article 4:* Upon the nomination of a consul the State shall communicate to the other State through diplomatic channels the respective Commission which shall contain the name, category and attributes of the nominee.

When a vice consul or a commercial agent named by the respective consul in the interests authorized by his law is concerned the Commission shall be issued and communicated to the consul.

*Article 5:* States may refuse to accept consuls nominated to serve in their territory or subject the exercise of the consular duties to certain special obligations.

*Article 6:* The consul may not be recognized as such until he has presented his Commission and obtained the exequatur of the State in whose territory he is to serve.

A provisional recognition may be conceded at the request of the League or of the consul pending the issuance in due form of the exequatur.

Officials named in accordance with the provisions of Article 4 are likewise subject to this condition and in such case it is the duty of the respective consul to request the exequatur.

*Article 7:* When the exequatur has been obtained it shall be presented to the authorities of the consular district who shall protect the consul in the exercise of his duties and guarantee to him the immunities to which he is entitled.

*Article 8:* The territorial Government may at any time withdraw the exequatur from the consul; but excepting in an emergency it shall not resort to this measure without having previously endeavored to obtain its cancellation by the Government of the consul.

*Article 9:* In the event of death, incapacity or absence of consular agents, any of the auxiliary employees whose official character has been made known previously to the Ministry of Foreign Affairs or Department of State may provisionally fulfill the consular functions and while so serving shall enjoy all the rights and prerogatives corresponding to the principal officer.

*Article 10:* Consuls shall exercise the attributes conferred upon them by the law of their State without prejudice to the legislation of the State where they fulfill their duties.

*Article 11:* Consuls shall deal officially with the authorities of their district in the exercise of their duties. Should their representations not be heeded they may, through the intermediary of the diplomatic officer of their nation, continue their representations before the Government of the State but should not communicate directly with it excepting in the absence or lack of a diplomatic official.

*Article 12:* In the absence of a diplomatic representative of the State of the consul, he may conduct those diplomatic representations which in such cases are permitted by the Government in which the consulate is established.

*Article 13:* When duly accredited a single person may combine diplomatic and consular functions provided the State before which he is accredited agrees thereto.

## SECTION II

*Article 14:* In the absence of a special convention between two nations, consular agents who are nationals of the State which appoints them, may not be detained nor tried except in cases where they are accused of the commission of a deed classified by local legislation as criminal.

*Article 15:* In criminal cases consular agents may be requested by the prosecution or the defense to serve as witnesses at a trial. This request shall be made with all consideration possible for the consular dignity and the duties of the office and shall be complied with by the consular official.

In civil matters consular agents are subject to the jurisdiction of the courts with the limitation, however, that when the consul is a national of his State and is not engaged in any private business for the purpose of revenue his testimony shall be taken verbally or in writing at his residence or office and with due consideration.

The consul nevertheless may voluntarily testify as a witness when such action would not occasion serious interference with the fulfillment of his official duties.

*Article 16:* Consuls are not subject to local jurisdiction for actions performed in an official capacity within the limits of their competency. In the case that an individual considers himself injured by the action of the consul, he shall present his claim before the Government, which, should it consider it proper, shall make it valid through diplomatic channels.

*Article 17:* With respect to unofficial acts consuls are subject both in civil and criminal matters to the jurisdiction of the State in which they exercise their functions.

*Article 18:* The official residence of consuls and the places occupied by consular offices and archives are inviolable and in no case may the local authorities enter them without the consent of the consular agents nor examine nor take possession of under any pretext whatsoever the documents or articles

found in a consular office. Nor may any consular official be obliged to present the official records to the courts or make declaration with respect to their content.

When consular agents are engaged in any business within the territory of the State where they exercise their functions the archives of the consulate and the documents related thereto shall be kept in a place entirely separate from that in which the private or business papers are kept.

*Article 19:* Consuls are obliged to deliver upon the simple request of the local authorities persons accused or condemned for crime who take refuge in the consulate.

*Article 20:* Consular agents as well as the employees of the consulate who are nationals of the State appointing them who do not engage in business for purposes of profit in the State in which they serve shall be exempt from all taxation, whether national, State, provincial, or municipal as well as from imposts on person or possessions except with respect to the possession of property or real estate situated in the State in which they serve or the produce thereof. Consular agents and employees who are nationals of the State which they represent are exempt from taxation on their salaries, honorariums, or wages, received by them in return for their consular services.

*Article 21:* The employee who serves in the absence of the consular agent or in any other way shall enjoy during his temporary service the same immunities and prerogatives.

*Article 22:* Consuls engaged in commerce or who exercise other functions apart from those corresponding to their consular duties shall be subject to local jurisdiction in all their activities which do not relate to the consular service.

## SECTION III

*Article 23:* Consular agents shall cease their services for illness or vacation and shall cease to serve:

- (a) Upon their death;
- (b) Upon retirement, resignation, dismissal; and
- (c) Upon the cancellation of the exequatur.

*Article 24:* The present convention does not affect obligations previously acquired by the contracting parties by virtue of international agreements.

*Article 25:* The present convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned plenipotentiaries sign the present Convention in Spanish,



English, French and Portuguese in the city of Habana, February 20, 1928.

*Reservation of the Delegation of Venezuela*

In the name of the Government which I represent I enter a reservation with respect to the coincidence of diplomatic and consular functions in one person because it is completely contrary to our tradition which has been maintained since its establishment until the present day in a form which does not permit of any change.

## CONVENTION ON NEUTRALITY

South American trade with Europe was severely affected by belligerent navies during the early part of the World War. In order to protect the interests of the American states, the Peruvian Government proposed in 1914 that the American republics jointly guarantee the inviolability of trade routes within a maritime area extending midway into the Atlantic and the Pacific.<sup>35</sup>

This proposal was placed before the Governing Board of the Pan American Union. On December 8, 1914, the Board appointed a special commission of nine members, of which the Secretary of State of the United States was Chairman, to "study the problems presented by the present European war." It was the intention of some diplomats that this body should prepare a program for a Congress of Neutrals. At the request of Secretary Lansing, the American Institute of International Law studied the question during the war. The project which it finally submitted to the Governing Board of the Pan American Union in 1924 seemed to follow the principle that neutral rights should be of greater importance than belligerent rights. In addition, it adopted *vœux* providing, among other things, that commercial blockade and the right of search be abolished.<sup>36</sup>

Rejecting all radical proposals, the Rio jurists merely adopted a project based on the Hague Neutrality Convention of 1907.<sup>37</sup> The project declared, however, that neutrality was a "duty." This phrase was omitted from the convention as adopted at Havana.<sup>38</sup>

## AMENDMENTS AND RESERVATIONS TO NEUTRALITY CONVENTION

As presented to the Havana Conference, the neutrality convention provided that the Governing Board of the Pan American Union should meet immediately upon the declaration of war to ascertain the common interest of states in regard to neutrality. The Union could protest against violations of the laws of war.<sup>39</sup>

These provisions failed of adoption at Havana, apparently because of the decision not to grant political powers to the Pan American Union.<sup>40</sup>

An amendment proposed by the Argentina delegate, to the effect that armed merchant ships should be treated as belligerent ships in neutral harbors, was carried by a vote of eleven to four.<sup>41</sup> The United States made a reservation in regard to this point, apparently because of its position during the World War that the arming of merchant ships did not give them belligerent status.<sup>42</sup> Cuba made a reservation to the same article.

Bolivia, calling attention to her landlocked position, demanded the adoption of an amendment to the effect that the transit of arms should be permitted across the territory of a country which separated a second state from the sea.<sup>43</sup> The sub-committee to which the matter was referred declined to accept the Bolivian proposal.<sup>44</sup>

Mr. Gonzales Roa of Mexico said that its adoption would create a servitude which neighboring states were not prepared to accept. Mr. Hughes, of the United States, supported the Bolivian proposal and it was adopted by the Commission by a vote of nine to five, with seven "absents." (See Article 22 below.)

In signing the neutrality convention, Chile, a state immediately affected by the Bolivian proposal, made a reservation to Article 22.

39. Pan American Union, *International Commission of Jurists, Public International Law*, p. 27. Articles 2 & 3, "Maritime Neutrality."

40. Cf. Part I, p. 54. (F. P. A. Information Service, Vol. IV, No. 4.)

41. *Diario*, p. 517.

42. Hyde, *International Law*, Vol. II, p. 490.

43. *Diario*, p. 563.

44. *Ibid.*, p. 565.

35. U. S. Foreign Relations, 1914, Supplement, p. 443.

36. Pan American Union, *Codification of American International Law*, p. 99. Cf. also, the address of M. Alvarez, *Diario*, p. 239.

37. *Comisión Internacional de Jurisconsultos Americanos*, Vol. II, p. 338, 354-6.

38. Cf. F. P. A. Information Service, Vol. IV. No. 2.



## MARITIME NEUTRALITY CONVENTION

The Governments of the Republics represented at the Sixth International Conference of American States held in the City of Habana, Republic of Cuba, in the year 1928;

Considering that when war occurs between two or more States the others may, in the interests of peace, offer their good offices or their mediation to put an end to the conflict, without such action being construed as an unfriendly act;

Convinced that if this objective cannot be attained the neutral States are equally interested in seeing that their rights are respected by the belligerents;

Considering that neutrality is the juridical situation of States that do not take part in hostilities and that it creates rights and imposes obligations of impartiality which should be regulated;

Recognizing that international solidarity demands that the freedom of commerce be always respected, avoiding, as far as possible, unnecessary burdens to neutrals;

It being convenient that as long as this objective is not fully attained those burdens be reduced to a minimum; and

Hoping that it may be possible to regulate the matter in such a manner that all the interests affected may have all the guarantees desired,

Have resolved to enter into a Convention to that effect, and have appointed the following Plenipotentiaries, to wit:

(here follows the names of the Plenipotentiaries)

who, after having presented their credentials, which were found in good and correct form, have agreed upon the following provisions:

### SECTION I

#### THE FREEDOM OF COMMERCE IN TIME OF WAR

*Article 1:* Commerce in time of war shall be governed by the following rules:

1. Warships of the belligerents have the right to detain and visit, on the high seas or in territorial waters that are not neutral, any merchant vessel for the purpose of ascertaining its character and nationality, and whether it carries cargo prohibited by international law, or has committed any violation of the blockade. If the merchant vessel does not heed the hint to stop, the warship may pursue it and detain it by force. Outside of this hypothesis, the vessel may not be attacked, except when, after being requested to stop, it shall fail to observe the instructions given to it.

The vessel shall not be put out of navigable condition before the crew and passengers have been transferred to a safe place.

2. Belligerent submarines are subject to the preceding rules. Should the submarine be unable to capture the vessel in accordance with these rules it shall not have the right to continue the attack nor to destroy the vessel.

*Article 2:* The detention of the vessel, as well as of its crew, due to a violation of neutrality, shall be made in the manner that best suits the State effecting the same, and at the expense of the offending vessel. Said State, save in the case of a serious fault on its part, is not responsible for damages suffered by the vessel.

### SECTION II

#### DUTIES AND RIGHTS OF THE BELLIGERENTS

*Article 3:* The belligerent States are obliged to abstain from committing in neutral waters acts of war or acts of any other kind which may constitute, on the part of the State which tolerates them, an infraction of neutrality.

*Article 4:* By the terms of the preceding article the belligerent State is forbidden:

(a) To utilize the neutral waters as a base for naval operations against the enemy, or for the purpose of renewing or increasing its military provisions or the armament of its ships or to complete the equipment of the latter.

(b) To establish in neutral waters radio-telegraph stations or any other equipment which may serve as a means of communication with its military forces and to avail itself of the installations of this nature which it might have established prior to the war and which had not been opened to the public.

*Article 5:* Warships of belligerents are forbidden to remain in the ports or waters of the neutral State for more than twenty-four hours. This provision shall be communicated to the ship as soon as it reaches the port or the territorial waters, and if it is already there at the time war is declared, immediately after the neutral State learns of such declaration.

Vessels used exclusively in scientific, religious or philanthropic missions are excepted from the preceding provisions.

The vessel may prolong its stay more than twenty-four hours in case of damage or rough condition of the sea; but it must depart as soon as the cause of the delay ceases to exist.

When by the law of the neutral State the vessel cannot receive fuel until twenty-four hours after its arrival in port, the period of stay shall be extended for a like period.

*Article 6:* The vessel that does not adjust itself to the preceding rules may be interned by order of the neutral government.

A ship is considered interned from the moment it receives an order to that effect from the local neutral authority, even if a petition for reconsideration has been interposed by the offending vessel, which will remain in custody from the moment the order is given.

*Article 7:* In the absence of a special provision of the local laws, the maximum number of warships of a belligerent which may be at the same time at a neutral port shall be three.

*Article 8:* No warship shall depart from a neutral port before twenty-four hours have elapsed

from the departure of an enemy warship. The one that entered first shall leave first, unless it happens to be in such condition as permits the extension of the stay. In any case, the ship that arrived subsequently has the right to notify the other, through competent local authorities, that within twenty-four hours it will leave the port, the one that entered first thus remaining at liberty to leave within that time. Should it depart, the notifying ship shall wait during the interval hereinbefore stipulated.

*Article 9:* Damaged belligerent ships shall not be permitted to make in neutral ports any other repairs than are necessary to enable them to continue the voyage, and which do not in any manner constitute an increase in their military power.

In no case shall damages caused by the enemy's fire be repaired.

The neutral State shall prove the nature of the reparations to be effected and shall see that they are carried out in the shortest time possible.

*Article 10:* Warships of the belligerents may provide themselves with fuel and provisions in neutral ports, under the conditions specially laid down by the local authorities, and in the absence of special stipulations, in the manner prescribed for provisioning in time of peace.

*Article 11:* Warships which receive fuel at a neutral port may not replenish the supply thereof in the same State before the expiration of three months.

*Article 12:* As regards the stay, supplying and provisioning of belligerent ships in the ports and jurisdictional waters of neutrals, the provisions relative to warships shall be applied equally to:

1. Ordinary auxiliary ships.
2. Merchant vessels converted into warships in accordance with Convention VII of the Hague of 1907.

The neutral vessel shall be seized and, in a general way, it shall be subject to the same treatment as the enemy merchant vessels:

- (a) When it takes a direct part in the hostilities;
- (b) When it is under the orders or the direction of an agent placed on board by an enemy government;
- (c) When it is totally freight-loaded by an enemy government;
- (d) When it is actually and exclusively destined for the transportation of enemy troops, or for the transmission of news in the interest of the enemy.

In the cases dealt with by the present article, merchandise belonging to the owner of the vessel or ship shall likewise be subject to confiscation.

### 3. Armed merchant ships.

*Article 13:* Auxiliary vessels of the belligerents, converted anew into merchant vessels, shall be admitted as such in the neutral ports, subject to the following conditions:

1. That the newly converted ship has not violated the neutrality of the country where it arrives.
2. That the new transformation has been effected in the ports or jurisdictional waters of the

country to which the vessel belongs or in the ports of its allies.

3. That the transformation be effective, that is to say, that the ship shall not show, neither from its crew nor from its installations, that it can lend services as an auxiliary, as it formerly did, to the armed fleet of its country.

4. That the government of the country to which the vessel belongs communicate to the other States the names of the auxiliary vessels which have lost such character in order to recover that of merchant vessels; and

5. That the same government obligate itself to see that said vessels are not again assigned to the service of the armed fleet with the character of auxiliaries.

*Article 14:* The airships of the belligerents shall not fly over the territory of jurisdictional waters of neutrals, except in accordance with the regulations of the latter.

## SECTION III

### RIGHTS AND DUTIES OF NEUTRALS

*Article 15:* Among the acts of assistance emanating from the neutral States and the acts of commerce effected by individuals, only the former are contrary to neutrality.

*Article 16:* The neutral State is forbidden:

- (a) To deliver to the belligerent, directly or indirectly, and for any reason whatever, warships, munitions or any war material;
- (b) To make loans or to grant credit to a belligerent during the war.

Credits granted by a neutral State to facilitate the sale or exportation of its food products or raw materials are excepted from this prohibition.

*Article 17:* Captured vessels shall not be conducted to a neutral port, except in case of non-navigability, rough condition of the sea or lack of fuel or provisions. Once the cause has ceased to exist, the captured vessels shall leave immediately; if none of the hypotheses indicated occur, the State shall suggest their departure, and if not obeyed, shall resort to any measures at its command to disarm both the ships and the officers and crew, or to intern both the ships and the officers and crew, or to intern the guard placed on board by the captor.

*Article 18:* Outside of the cases provided for in Article 17 the neutral State must liberate the prisoner ships which have been conducted to its jurisdictional waters.

*Article 19:* When a vessel carrying merchandise must be interned in a neutral country, the merchandise that is destined to said country shall be disembarked at once and that destined to another country shall be transferred.

*Article 20:* The merchant vessel which having provided itself with fuel and other provisions in a neutral State has repeatedly delivered all or part of its supply to belligerent ships, shall not again receive provisions or fuel in the same State.

*Article 21:* Should it develop that the merchant vessel carrying a belligerent flag, because of its preparation or other circumstances, can furnish the

warships of a State the provisions which they require, the local authorities may deny the provisioning, or demand from the agent of the company a guarantee that the vessel referred to will not aid or assist any other ship.

*Article 22:* Neutral States are not obligated to prevent the exportation or transit, at the expense of any one of the belligerents, of arms, munitions, and in general everything that may be useful to its military forces.

Transit should be permitted when two American nations being at war, one of the belligerents is a mediterranean country which has no other manner of provisioning itself, always provided that this does not affect the vital interests of the country of whom transit is requested.

*Article 23:* Neutral States shall not oppose the voluntary departure of the nationals of the belligerent States, even if they leave in great numbers at one time; but they may oppose the voluntary departure of such of their own nationals as are going to enlist with the armed forces.

*Article 24:* The use by the belligerents of the means of communication of the neutral States, or which cross or touch their territory, is subject to the measures dictated by the local authorities.

*Article 25:* If in consequence of naval operations outside of the jurisdictional waters of the neutral States there should be dead or wounded in the belligerent ships, said States may send to the place of disaster hospital ships under the vigilance of the neutral government. These ships shall enjoy complete inviolability during their mission.

*Article 26:* The neutral States are obligated to exercise all the necessary vigilance permitted by the means at their command in order to prevent in their ports or jurisdictional waters any violation of the preceding provisions.

#### SECTION IV

#### THE FULFILLMENT AND OBSERVANCE OF THE LAWS ON NEUTRALITY

*Article 27:* The belligerent who violates the preceding provisions shall indemnify for the damage caused and shall also answer for the acts of persons forming part of its armed force.

*Article 28:* The present Convention does not affect prior obligations contracted by the parties by virtue of international agreements.

*Article 29:* The present Convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the task of sending authentic certified copies to the governments for the aforementioned ratifications. The instrument of ratification shall be deposited in the files of the Pan American Union at Washington which shall report such deposit to the signatory governments; such notification shall be equivalent to an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the Plenipotentiaries named sign this present Convention in Spanish, English, French and Portuguese in the City of Havana, on February 20th, 1928.

#### CONVENTION ON ASYLUM

Asylum is the protection granted by a foreign ambassador to individuals fleeing from local authorities, or from mob violence. This practice, which arose out of the fact that foreign embassies are inviolable, soon came to be greatly abused. Some embassies in various unstable countries had protected veritable colonies of refugees who used the embassy as a basis to plot against the state. With the growth of the principle of territorial sovereignty, the right of asylum disappeared from Europe by the end of the nineteenth century. But it still seems to exist in parts of Spanish America. The United States, however, has never recognized the right.<sup>45</sup>

The Rio jurists drafted a convention prohibiting asylum to persons suspected or condemned for ordinary crime, but allowing it in the case of persons accused of political offenses. The principle met the opposition of the delegate of Haiti, a country in which foreign legations have frequently granted asylum to political refugees, who said:

"I shall vote against the right of political asylum because it has no juridical foundation, because it would permit subversive and extremist doctrines to continue their work against the social organization, because it would insure impunity to revolutionists, because it would feed civil war. I shall vote against this principle, because it is injurious, because it enables the Government of a foreign state to meddle in internal questions, contrary to the principle of non-intervention. . . gravely changing the true nature of a diplomatic agent, converting him into a judge in the case of determining, in another state, when an offense is political and when it is ordinary."<sup>46</sup>

The delegate of Haiti moved an amendment authorizing a state to suppress or regulate political asylum. It was defeated by a vote of nine to one.

The United States delegate said that his government did not recognize the right of asylum. The Convention on Asylum was adopted, but the United States and Venezuela abstained from voting.<sup>47</sup>

45. Moore, *Digest of International Law*, Vol. II, p. 781; Hyde, *International Law*, Vol. I, p. 760.

46. *Comision Internacional de Jurisconsultos Americanos*, Vol. II, p. 370.

47. *Comision*, cited, Vol. II, p. 372.



At the Havana Conference a number of amendments to this convention were made. One provided that asylum would be respected in the case of political offenders in legations, warships, military camps, and airdromes to the extent that it is admitted by usage or conventions in force in the countries in which the right is exercised.<sup>48</sup>

A second amendment provided that an offender against common criminal law taking asylum in a legation should be delivered up when the local government demanded it.

The full text of the convention is as follows:

#### ASYLUM CONVENTION

*Article 1:* It is not permissible for States to grant asylum in Legations, on battleships, in military camps or aircraft to persons accused of or condemned for common crimes nor to deserters from the land and air service.

Persons accused of or condemned for common crimes who take refuge in any of the places indicated in the preceding paragraph should be surrendered immediately when so requested by the local Government.

Should such persons take refuge in foreign territory the surrender shall be made through the medium of extradition and only in such cases and in the manner established by the respective treaties and conventions or the constitution and laws of the country of refuge.

*Article 2:* The asylum of political offenders in Legations, warships, military camps or aircraft, shall be respected to the extent that, as a right or for humanitarian tolerance, is permitted by exchange, conventions or the laws of the country of refuge and in accordance with the following provisions:

*First:* Asylum may not be granted excepting in cases of emergency and for the time strictly necessary for the refugee to effect his safety in some other manner.

*Second:* The diplomatic agent, commander of a war vessel, or military camp or aircraft, immediately after granting asylum shall communicate the fact to the Ministry of Foreign Affairs of the State of the refugee or to the military authority of the place should the act occur outside the capital.

*Third:* The Government of the State may demand that the refugee be placed without national territory in the shortest time possible; and the diplomatic agent of the country who has granted asylum may, in turn, demand the necessary guarantees so that the refugee in leaving the country may be respected in the inviolability of his person.

*Fourth:* Refugees may not be disembarked at any point in the national territory nor at any place too near it.

*Fifth:* While the asylum exists it shall not be permitted to the refugees to engage in acts contrary to public tranquillity.

*Sixth:* States are not obliged to pay the expenses of the person granted asylum.

*Article 3:* The present Convention does not affect obligations acquired previously by the contracting parties by virtue of international agreements.

*Article 4:* The present Convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned Plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese in the city of Habana, February 20, 1928.

#### *Reservation of the Delegation of the United States of America*

The United States of America upon signing the present Convention makes an express reservation making it known that the United States does not recognize and does not subscribe to the so-called doctrine of asylum as a part of international law.

#### CONVENTION ON OBLIGATIONS OF STATES IN CIVIL WAR

It has been a rule of international law that governments should not allow their territory to be used by revolutionists as a basis of operations against the governments of neighboring states.<sup>49</sup>

The Rio jurists drafted a convention attempting to define these obligations. The convention seemed to be a compromise between the Anglo-Saxon system, which merely punishes hostile expeditions and overt acts, and the Latin system which punishes even conspiracy.<sup>50</sup>

One article of the project prohibited the traffic in arms except by the government. The draft did not make clear, however, whether arms could be shipped to revolu-

48. *Diario*, p. 155. Cf. also the asylum provision in Article IX, General Treaty of Peace and Amity between the Central American States, February 7, 1923.

49. Cf. Article XIV, General Treaty of Peace and Amity of February 7, 1923, between the Central American States.

50. Cf. a learned discussion by Lauterpacht, H., *Revolutionary Activities by Private Persons Against Foreign States*, (American Journal of International Law, January, 1928; p. 105-30.)



tionists even after their belligerency had been recognized. This point was cleared up at Havana, where an amendment was adopted recognizing belligerency, in which case the laws of neutrality apply.<sup>51</sup>

During the debate, the delegate of Mexico raised the question of the desirability of closing ports held by revolutionists. In reply, some delegates defended the right of revolution; no action on the suggestion was taken.

The text of the convention is as follows:

#### RIGHTS AND DUTIES OF STATES IN THE EVENT OF CIVIL WAR CONVENTION

*Article 1:* The contracting States obligate themselves to observe the following rules with respect to civil war in one or another of them:

*First:* To employ the means at their disposal to prevent the inhabitants of their territory, both nationals and foreigners, from participating, recruiting material, crossing the frontier or embarking in their territory to initiate or foment a civil war.

*Second:* To disarm and intern all rebel forces crossing their frontiers, the expenses of interning to be charged to the State where order had been disturbed. The arms found in the possession of the rebels may be confiscated and withdrawn by the Government of the country of refuge to be returned at the expiration of the conflict to the State in which the civil war occurred.

*Third:* To prohibit the traffic of arms and war material except when it is destined to the Government so long as the belligerency of the rebels has not been recognized in which case the rules of neutrality shall be applied.

*Fourth:* To prevent within their jurisdiction the arming or adoption to warlike purposes of any vessel destined to operate in the interests of the rebellion.

*Article 2:* The qualification of piracy emanating from the Government of a country against vessels arising in arms does not obligate the other States.

The State which is injured by depredations from *insurrecto* vessels has the right to take against them the following punitive measures: Should the injury be caused by war vessels it may capture them to deliver them to the Government of the State to which they belong which shall try them; should the injury be caused by merchant vessels the injured State may capture them and apply to them the corresponding penal laws.

The *insurrecto* vessel, whether a war or merchant vessel, which flies the flag of a foreign State to disguise its acts may also be captured and tried by the State whose flag is so used.

*Article 3:* The *insurrecto* vessel whether a warship or a merchant vessel, which has been equipped by the rebels and which arrives at a foreign port or seeks refuge in it shall be delivered by the Government thereof to the constituted Government of the country involved in civil war and the crew shall be considered as political refugees.

*Article 4:* The present Convention does not affect obligations previously acquired by the contracting parties by virtue of international agreement.

*Article 5:* The present Convention after being signed shall be submitted for ratification to the signatory States. The Government of Cuba is charged with the duty of sending authentic certified copies to the Governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington which shall give notice of this deposit to the signatory Governments; such notification shall be valid as an exchange of ratifications. This Convention shall remain open for the adherence of non-signatory States.

In faith whereof the aforementioned Plenipotentiaries sign the present Convention in Spanish, English, French and Portuguese in the city of Habana, February 20, 1928.

#### RESOLUTION ON THE POLICING OF FRONTIERS

The final question considered by Committee No. II dealt with Frontier Police. On January 24, the Argentina delegate presented a report suggesting a form of convention in regard to the pursuit of criminals across frontiers. As an example of a practicable convention he referred to the treaties concluded between Argentina and Bolivia, and between Argentina and Chile, in 1919, which provide that, if a criminal crosses a frontier to escape, the local police may continue their pursuit until he is captured.<sup>52</sup>

During the debate, the delegate of Mexico stated that his government, representing a people with "an exalted patriotism," could not allow foreign forces to cross its frontiers. The proposal was then made that police authorities should not cross frontiers except by virtue of a treaty or by agreements between the local authorities of the neighboring countries.<sup>53</sup>

So many differences arose over the question that the matter was finally referred to a sub-committee. On February 18, the Conference adopted a resolution (evading

51. *Diario*, p. 181.

52. *Diario*, p. 82.

53. *Diario*, p. 153.

the question of pursuit) merely "recommending that the Governments consider the most effective means not only of watching their reciprocal frontiers, but also of arriving at a better and more secure co-operation (*convivencia*)" in their relations.

#### COMMITTEE NO. 3—PRIVATE INTERNATIONAL LAW AND LEGISLATIVE UNIFORMITY

Westlake defines private international law as "that branch of law administered by national courts—and therefore a branch of national law, since such courts have no other authority than that of the national sovereignty—which deals with cases including a foreign element, whether of persons—and whether these are foreign by residence or domicile or by nationality—of things, or of occurrences."<sup>54</sup>

The decision of such cases often raises a question as to the national law which should be applied. Should an English court apply French or English law to the marriage of a French minor in England, or to a contract made in France? These are technical legal questions, and in the American continent some states follow the general principle of domicile in determining the civil status of persons, while others follow the principle of nationality. For example, under the law of domicile, a contract is interpreted according to the law of the country where jurisdiction is entertained; under the law of nationality, according to the law of the parties to the contract.

The difference between these two principles of domicile and nationality was brought out in discussing the codification of private international law at the Pan American Conference at Santiago in 1923. The opinion was expressed that unless some conciliation between these two views could be brought about, no practical advance in the codification of private international law could be made. The Conference therefore recommended that before preparing an American Code of Private International Law, the Committee of Jurists should, if advisable, decide in advance what juridical system should be followed by the American states.

Differences due to the conflict of laws may be solved not only by codifying the principles of private international law to be applied to their solution, but also by the passage of uniform legislation in the various states in regard to civil law, commercial law, and other branches of private law.<sup>55</sup> Such uniformity is especially desirable in regard to questions arising under maritime law and affecting the rights of ships.

#### COMMITTEE OF JURISTS FOLLOWS BUSTAMANTE CODE

The Committee of Jurists at Rio also devoted itself to the codification of private international law; and it adopted with a few slight modifications the Bustamante Code. This Code did not attempt to choose between the law of nationality and the law of domicile, but simply provided (Article 7) that "each contracting State shall apply as personal law that of the domicile or that of the nationality, according to the system which its domestic legislation may have adopted or may hereafter adopt."

The Bustamante Code has four books as follows:

- Book I—International Civil Law
- Book II—International Mercantile Law
- Book III—Penal International Law
- Book IV—International Law of Procedure

Because of the length of the Code and the fact that the United States apparently has no intention of adhering to it, the text is not printed here.<sup>56</sup>

A convention, carrying this Code into effect, was adopted by the Havana Conference. At the same time, fifteen states made reservations or declarations in regard to various articles. Argentina declared that it could not accept the parts of the Code modifying the "Law of Domicile," and the same stand was taken by Paraguay. The delegations of Colombia and Costa Rica said that, while they would vote for the compromise between the law of nationality and the law of domicile as a transitory measure, the juridical unity of the

54. Westlake, J., *International Law*, Part I, p. 249.

55. A basis for the latter work has been laid in the studies of the Inter-American High Commission, such as *Comparison of American Legislation on Bills of Exchange and Promissory Notes with the Uniform Regulation Adopted at the Hague Convention of 1912*.

56. The text is given in the final act of the Havana Conference.

Continent tends toward the law of domicile, since this alone "effectively safeguards the sovereignty and independence of the American peoples."<sup>57</sup> They could not look "without supreme disquietude at European immigrants having the pretension to invoke in America their laws of origin to govern here their civil status. . . ." To admit this possibility would be to create in America "a State without the State, and place us under the régime of the Capitulations." According to Article 3 of the Convention, a state may make reservations to the Code upon ratification.

At the third meeting of Committee III, on private international law, Judge Morgan O'Brien, of the United States, said:

"We are not at the present moment at liberty to vote for the adoption of this Code as now presented because it involves many questions that are with us domestic questions. We have, as you know, forty-eight states, each sovereign, each having conceded to the general government such powers as they did not reserve to themselves. . . . All we say with reference to the [proposal] before this Committee is that it covers matters that are of domestic jurisdiction with us. . . ."<sup>58</sup>

#### RESERVATION OF THE UNITED STATES

In a final declaration affixed to the convention, the United States declared:

"The Delegation of the United States of America regrets very much that it is unable at the present time to approve the Code of Dr. Bustamante, as in view of the Constitution of the United States of America, the relations among the States members of the Union and the powers and functions of the Federal Government, it finds it very difficult to do so. The Government of the United States of America firmly maintains its intention not to dissociate itself from Latin-America, and, therefore, in accordance with Article VI of the Convention which permits any government to adhere later thereto, it will make use of the privilege extended by this article in order that, after carefully studying the Code in all its provisions, it may be enabled to adhere to at least a large portion thereof. For these reasons, the Delegation of the United States of America reserves its vote in the hope, as has been stated, of adhering partly or to a considerable number of the Code's provisions."

57. The question whether a state follows the law of nationality or the law of domicile has an important bearing upon the question of diplomatic protection. Realizing this, the Mexican and the Guatemalan Governments are now re-writing their codes, doing away with the law of nationality in favor of the law of domicile. On one aspect of the subject, see the report of the League of Nations, Committee of Experts for the Progressive Codification of International Law, *Nationality of Commercial Corporations and Their Diplomatic Protection*. (C.207. M.81. 1927. V.)

58. Cf. also Dr. Scott's remark, *Diario*, p. 412.

In his report to the Plenary Conference on the work of Committee No. III, the delegate of Brazil said:

"... the fact alone of approving this work of monumental codification, and granting to America the most perfect body of laws which could be imagined for the solution of legislative conflicts, would constitute thus the most memorable of all the Conferences realized anywhere and at any time for the guarantee of the peace and for the empire of justice."

It was decided to recommend to the governments the desirability of naming special judges in each country to apply the provisions of the Bustamante Code.<sup>59</sup>

#### RESOLUTIONS AFFECTING LEGISLATIVE UNIFORMITY

Resolutions designed to promote uniformity in legislation were passed as follows:

1. Recommending adoption of a uniform law on letters of exchange, taking as the base the rules approved by the Hague in 1912.
2. Recommending amendment of legislation so as to permit the organization of anonymous societies without expressing the value of their capital or stock, and the stock of which may be divided into different categories.
3. Recommending that Chambers of Commerce be organized in foreign trade centers and that they enter into agreements for commercial arbitration.<sup>60</sup>
4. Recommending adhesion to Brussels Convention on Salvage of Sept. 23, 1910, to the Naval Mortgage Convention of April 10, 1926, and to the Convention Limiting the Responsibility of Shipowners, of November, 1922.
5. Recommending to the next Conference consideration of the project of the United States, asking that steps be taken to reduce losses caused by theft in the mercantile marine traffic.
6. Authorizing the establishment of an Inter-American Commission of Women, charged with preparing information in regard to the political and civil equality of women on the continent. This commission will be composed of seven women appointed by the Pan American Union, who will appoint other members until each American country is represented.<sup>61</sup>

59. *Diario*, p. 505.

60. Cf. Judge O'Brien's report on commercial arbitration, *Diario*, p. 377.

61. The reporter of this project had recommended a second part of this resolution to the effect that governments should enact legislation giving women the right to exercise guardianship, etc., and the right to enter the liberal professions and commerce. He asked the acceptance of the principle that the nationality of an American woman followed the nationality of an alien husband, except where she expressed an intention to retain it; and he also asked the gradual extension of woman's suffrage. These proposals were not accepted. "De-rechos de la Mujer y Perdida de la Nacionalidad Por Matrimonio." *Diario*, p. 416.

See also the recommendations of the Bolivia delegate on the political and civil rights of woman. *Diario*, p. 319.



It was agreed that topics of legislative uniformity upon which action had not been taken by the Conference should be studied by technical committees.<sup>62</sup>

To encourage future progress in codification, the Conference adopted the following resolution:

#### RESOLUTION

The Sixth International Conference of American States resolves:

1. The future formulation of international law shall be made by means of a technical preparation duly organized with the cooperation of the committees on investigation and international coordination and of the scientific institutes hereinafter mentioned.

2. The International Commission of Jurists of Rio de Janeiro shall meet on the dates set by the respective governments to carry on the work of codification of public and private international law, the Pan American Union being charged with the preparation of the pertinent resolution for the purpose of said meeting.

3. Three permanent committees shall be organized, one in Rio de Janeiro, for the work on public international law; another at Montevideo, for the work on private international law; and another at Habana to undertake the study of comparative legislation and uniformity of legislation. The functions of said organizations will be:

(a) To present to the governments a list of the subjects susceptible of codification and uniformity of legislation, including those definitely subject to regulation and formulation, and those which international experience and new principles and aspirations of justice indicate require prudent juridical development.

The presentation of this list shall be for the purpose of obtaining from the governments a statement as to the subjects which in their opinion might be the object of study as a basis of the formulation of conventional regulations or of organic declarations.

(b) To classify, on the basis of the aforesaid list and of the replies of the governments, the subject matter in the following manner: (1) subjects which are susceptible to codification because they have the unanimous consent of the governments; (2) subjects susceptible of being proposed as subject to codification because while not unanimously supported, they represent the predominant opinion of the governments; (3) subjects with respect to which there is no predominant opinion in favor of immediate regulation.

(c) To present the foregoing classification to the governments in order to ascertain their general views with respect to the manner in which the juridical problems of codifiable subjects can be brought up and resolved, as well as all information and

juridical, legal, political, diplomatic and other antecedents which might lead to a complete understanding.

(d) To request and obtain from the national societies of international law their scientific opinion and their general views regarding the regulation and formulation of the juridical questions which are the objects of these committees.

(e) To organize all the foregoing material and remit it together with drafts of projects to the Pan American Union, which shall submit them to the scientific examination of the Executive Council of the American Institute of International Law so that it may make a technical study of said drafts and present its conclusions and formulas, with full explanations, in a report on the subject.

4. Likewise, the opinion of the Inter-American High Commission as a technical adviser, shall be consulted in economic, financial and maritime matters.

5. When the studies and the formulas above mentioned have been presented, the governments shall be advised, and they may order a meeting of the Commission of Jurists, if they consider it proper, or the inclusion thereof in the program of a future international conference.

6. In order to include in the program of the International American Conferences matters susceptible of codification or of legislative uniformity or to include them in the program of the Commission of Jurists, in the event that it be so agreed, it shall be necessary that the governments shall have become acquainted with the projects and antecedents referred to, at least one year in advance.

7. The three committees above mentioned shall be formed by the governments with members of the respective national societies of international law. They shall communicate with the governments and the Executive Council of the Institute through the Pan American Union.

8. When considered opportune, a commission of jurists versed in the civil legislation of the countries of America may be constituted in order that it may proceed to study said legislations and prepare a uniform project of civil legislation for the countries of America, especially of Latin-America, selecting the means to obviate the inconveniences resulting from the diversity of legislation.

9. To the extent permitted by its by-laws, the Pan American Union will cooperate in the preparatory work referred to in the preceding articles.

#### COMMITTEE NO. 4— ON COMMUNICATIONS

The most important subject in connection with Communications was the regulation of Aviation. In 1923 the Pan American Conference at Santiago authorized the establishment of a Commission on Commercial Aviation, which met at Washington in

<sup>62</sup>. *Diario*, p. 437.



the spring of 1927 and drew up seven resolutions in regard to aviation.

The Governing Board, in the light of these resolutions, drafted an aviation convention which was presented to the Havana Conference. This treaty laid down the principle that every Power had complete and exclusive sovereignty over the air space above its territory, but each state should accord freedom of innocent passage across its territory to private aircraft. However, for reasons of security, states could establish prohibited zones, providing no distinction was made between domestic and alien aircraft engaged in international traffic.

#### PROTECTION OF PANAMA CANAL CREATES A DIFFICULTY

The existence of the Panama Canal, however, created a difficulty. The United States was responsible for the protection of the canal, which might be menaced by aircraft using as a base the Republic of Panama, whose territory surrounded the canal. For the purpose of safeguarding the canal, Article X of the unratified treaty between Panama and the United States, of July 28, 1926, proposed to establish joint United States-Panama control over all private aircraft in the Panama Republic. Apparently believing that in its original form the Havana Aviation Convention would make the proposed Panama agreement impossible, Mr. Fletcher of the United States proposed an amendment<sup>63</sup> to the effect that if two states for military motives or in the interest of public security wished to enter into an agreement about the establishment of prohibited zones within their respective territories, they could do so, provided that they did not discriminate against alien aircraft.

The delegate of Colombia, Mr. Olaya, objected to the Fletcher amendment. Without mentioning Panama, he declared that such zones might cover the entire territory of a state and result "in prohibiting any international commercial aircraft;" such agreement might give rise to "local military alliances."<sup>64</sup>

Colombia is one of the few countries of Latin-America with a regularly established airway. The Scadta line connects Barranquilla, a port on the Caribbean, with Girardot on the Magdalena River close to Bogota, the capital of Colombia, and then to the Pacific. The company wishes to extend its airway to Panama, and thus establish connection with incoming Pacific or Atlantic steamers.

After private conversations, a compromise was finally reached. Mr. Fletcher stated: "I do not hesitate to say that the desire of the United States to safeguard the Panama Canal was what inspired us to propose this amendment."<sup>65</sup> But there was no intention on the part of the United States to obstruct commercial aircraft. The convention was open to adhesion by any state, American or otherwise. The delegate of Colombia agreed that respect should be shown to the necessity of defending the Panama Canal.<sup>66</sup>

It was finally provided that two or more states could "agree upon appropriate regulations pertaining to the operation of aircraft and the fixing of specified routes." These regulations should in no case prevent the establishment of inter-American aerial lines and terminals, and should guarantee equality of treatment to aircraft of contracting states.<sup>67</sup>

During the debate on the proposal, Mr. Alfaro of Panama made a declaration to the effect that the Republic of Panama has as essential an interest in protecting the canal as has the United States. He declared that, so far, Panama had not granted any right to the United States to control aircraft in Panama in any existing treaty, although the question was under negotiation.<sup>68</sup>

#### HAVANA AVIATION TREATY RECOGNIZES EXISTING TREATIES

The final question then arose of whether or not the Havana Aviation Treaty superseded the Paris Air Navigation Convention of 1919 and the Madrid Convention of 1926

63. *Diario*, p. 162.

64. *Diario*, p. 164.

65. *Diario*, p. 441.

66. *Diario*, p. 443.

67. Cf. Articles XXX and XXXV, of the Convention on Commercial Aviation, p. 212.

68. *Diario*, p. 441.

to which certain Latin-American states were signatories. Answering this point in the negative, Article XXX states that "nothing contained in this convention shall affect the rights and obligations established by existing treaties." Mr. Espil of Argentina pointed out, however, that the three conventions were not always in agreement and that consequently they could not all be enforced.<sup>69</sup>

He proposed a resolution, the preamble of which stated that the multiplicity of air conventions, which might lead eventually to the formation of antagonistic systems, was detrimental to the development of air traffic. The resolution itself proposed an international aviation conference.<sup>70</sup>

While the Conference did not accept his preamble, it adopted the substance of the proposal by passing a resolution expressing warm sympathy with the idea of President Coolidge to convoke in Washington next December an International Conference on Civil Aviation.

The full text of the aviation convention is as follows:

#### COMMERCIAL AVIATION CONVENTION

As amended in the Sub-Committee of the Committee on Communications

*Article 1:* The High Contracting Parties recognize that every State has complete and exclusive sovereignty over the air space above its territory and territorial waters.

*Article 2:* The present Convention applies exclusively to private aircraft.

*Article 3:* The following shall be deemed to be State aircraft:

- a. Military and naval aircraft.
- b. Aircraft exclusively employed in State service, such as posts, customs, police.

Every other aircraft shall be deemed to be a private aircraft.

All State aircraft other than military, naval, customs and police aircraft shall be treated as private aircraft and as such shall be subject to all the provisions of the present Convention.

*Article 4:* Each contracting State undertakes in time of peace to accord freedom of innocent passage above its territory to the private aircraft of the other contracting States, provided that the conditions laid down in the present Convention are observed. The regulations established by a contracting State with regard to admission over its territory of aircraft of other contracting States shall be applied without distinction of nationality.

*Article 5:* Each contracting State has the right to prohibit for reasons which it deems convenient in the public interest the flight over fixed zones of its territory by the aircraft of the other contracting States and privately owned national aircraft employed in the service of international commercial aviation, with the reservation that no distinction shall be made in this respect between its own private aircraft engaged in international commerce and those of the other contracting States likewise engaged. Each contracting State may furthermore prescribe the route to be followed over its territory by the aircraft of the other States, except in cases of *force majeure* which shall be governed in accordance with the stipulations of Article XVIII of this Convention. Each State shall publish in advance and notify the other contracting States of the fixation of the authorized routes and the situation and extension of the prohibited zones.

*Article 6:* Every aircraft over a prohibited area shall be obliged, as soon as this fact is realized or upon being so notified by the signals agreed upon, to land as soon as possible outside of said area in the airdrome nearest the prohibited area over which it was improperly flying and which is considered as an international airport by the subjacent State.

*Article 7:* Aircraft shall have the nationality of the State in which they are registered and cannot be validly registered in more than one State.

The registration entry and the certificate of registration shall contain a description of the aircraft, and state the number or other mark of identification given by the constructor of the machine, the registry marks and nationality, the name of the airdrome or airport usually used by the aircraft, and the full name, nationality and domicile of the owner, as well as the date of registration.

*Article 8:* The registration of aircraft referred to in the preceding article shall be made in accordance with the laws and special provisions of each contracting State.

*Article 9:* Every aircraft engaged in international navigation must carry a distinctive mark of its nationality, the nature of such distinctive mark to be agreed upon by the several contracting States. The distinctive marks adopted will be communicated to the Pan American Union and to the other contracting States.

*Article 10:* Every aircraft engaged in international navigation shall carry with it in the custody of the aircraft commander:

- a. A certificate of registration, duly certified to according to the laws of the State in which it is registered;
- b. A certificate of airworthiness, as provided for in Article XII;
- c. The certificates of competency of the commander, pilots, engineers, and crew, as provided for in Article XIII;
- d. If carrying passengers, a list of their names, addresses and nationality;
- e. If carrying merchandise, the bills of lading and manifests; and all other documents re-

<sup>69.</sup> Cf. *Diario*, p. 441. See also Part I, p. 78. (F. P. A. Information Service, Vol. IV, No. 4.)

<sup>70.</sup> *Diario*, p. 445.

quired by customs laws and regulations of each country;

f. Log books;

g. If equipped with radio-telegraph apparatus, the corresponding license.

*Article 11:* Each contracting State shall every month file with every other State party to this Convention and with the Pan American Union, a copy of all registrations and cancellations of registrations of aircraft engaged in international navigation as between the several contracting States.

*Article 12:* Every aircraft engaged in international navigation (between the several contracting States) shall be provided with a certificate of airworthiness issued by the State whose nationality it possesses.

This document shall certify to the States in which the aircraft is to operate, that, according to the opinion of the authority that issues it, such aircraft complies with the airworthiness requirements of each of the States named in said certificate.

The aircraft commander shall at all times hold the certificate in his custody and shall deliver it for inspection and verification to the authorized representatives of the State which said aircraft visits.

Each contracting State shall communicate to the other States party to this Convention and to the Pan American Union its regulations governing the rating of its aircraft as to airworthiness and shall similarly communicate any changes made therein.

While the States affirm the principle that the aircraft of each contracting State shall have the liberty of engaging in air commerce with the other contracting States without being subjected to the licensing system of any State with which such commerce is carried on, each and every contracting State mentioned in the certificate of airworthiness reserves the right to refuse to recognize as valid the certificate of airworthiness of any foreign aircraft where inspection by a duly authorized commission of such State shows that the aircraft is not, at the time of inspection, reasonably airworthy in accordance with the normal requirements of the laws and regulations of such State concerning the public safety.

In such cases said State may refuse to permit further transit by the aircraft through its air space until such time as it, with due regard to the public safety, is satisfied as to the airworthiness of the aircraft, and shall immediately notify the State whose nationality the aircraft possesses and the Pan American Union of the action taken.

*Article 13:* The aircraft commander, pilots, engineers, and other members of the operating crew of every aircraft engaged in international navigation between the several contracting States shall, in accordance with the laws of each State, be provided with a certificate of competency by the contracting State whose nationality the aircraft possesses.

Such certificate or certificates shall set forth that each pilot, in addition to having fulfilled the re-

quirements of the State issuing the same, has passed a satisfactory examination with regard to the traffic rules existing in the other contracting States over which he desires to fly. The requirements of form of said documents shall be uniform throughout all the contracting States and shall be drafted in the language of all of them and for this purpose the Pan American Union is charged with making the necessary arrangements amongst the contracting States.

Such certificate or certificates shall be held in the possession of the aircraft commander as long as the pilots, engineers and other members of the operating crew concerned continue to be employed on the aircraft. Upon the return of such certificate an authenticated copy thereof shall be retained in the files of the aircraft.

Such certificate or certificates shall be open at all times to the inspection of the duly authorized representatives of any State visited.

Each contracting State shall communicate to the other States party to this Convention and to the Pan American Union its regulations governing the issuance of such certificates and shall from time to time communicate any changes made therein.

*Article 14:* Each and every contracting State shall recognize as valid, certificates of competency of the aircraft commander, pilots, engineers and other members of the operating crew of an aircraft, issued in accordance with the laws and regulations of other contracting States.

*Article 15:* The carriage by aircraft of explosives, arms and munitions of war is prohibited in international aerial navigation. Therefore, no foreign or native aircraft authorized for international traffic shall be permitted to transport articles of this nature, either between points situated within the territory of any of the contracting States or through the same even though simply in transit.

*Article 16:* Each State may prohibit or regulate the carriage or use, by aircraft possessing the nationality of other contracting States, of photographic apparatus. Such regulations as may be adopted by each State concerning this matter shall be communicated to each other contracting State and to the Pan American Union.

*Article 17:* As a measure of public safety or because of lawful prohibitions, the transportation of articles in international navigation other than those mentioned in Articles XV and XVI may be restricted by any contracting State. Such restrictions shall be immediately communicated to the other contracting States and to the Pan American Union.

All restrictions mentioned in this Article shall apply equally to foreign and national aircraft employed in international traffic.

*Article 18:* Every aircraft engaged in international traffic which enters the air space of a contracting State with the intention of landing in said State shall do so in the corresponding customs air-drome, except in the cases mentioned in Article XIX and in case of *force majeure* which must be proved.



Every aircraft engaged in international navigation, prior to its departure from the territorial jurisdiction of a contracting State in which it has landed, shall obtain such clearance as is required by the laws of such State at a port designated as point of departure by such State.

Each and every contracting State shall notify every other State party to this Convention and the Pan American Union of such airports as shall be designated by such State as ports of entry and departure.

When the laws or regulations of any contracting State so require, no aircraft shall legally enter into or depart from its territory through places other than those previously authorized by such State as international airports, and the landing therein shall be obligatory unless a special permit, which has been previously communicated to the authorities of said airport, is obtained from the competent authorities of said State, in which permit shall be clearly expressed the distinctive marks which the aircraft is obliged to make visible whenever requested to do so in the manner previously agreed upon in said permit.

In the event that for any reason, after entering the territorial jurisdiction of a contracting State, aircraft of another contracting State should land at a point other than an airport designated as a port of entry in that State, the aircraft commander shall immediately notify the nearest competent authority and hold himself, crew, passengers and cargo at the point of landing until proper entry has been granted by such competent authority unless communication therewith is impracticable within twenty-four hours.

Aircraft of one of the contracting States which flies over the territory of another contracting State shall be obliged to land as soon as ordered to do so by means of the regulation signals, when for any reason this may be necessary.

In the cases provided for in this article, the aircraft, aircraft commander, crew, passengers and cargo shall be subject to such immigration, emigration, customs, police, quarantine or sanitary inspection as the duly authorized representatives of the subjacent State may make in accordance with its laws.

*Article 19:* As an exception to the general rules, postal aircraft and aircraft belonging to aerial transport companies regularly constituted and authorized may be exempted, at the option of the subjacent State, from the obligation of landing at an airdrome designated as a port of entry and authorized to land at certain inland airdromes, designated by the customs and police administration of such State, at which customs formalities shall be complied with. The departure of such aircraft from the State visited may be regulated in a similar manner.

However, such aircraft shall follow the normal air route, and make their identity known by signals agreed upon as they fly across the frontier.

*Article 20:* From the time of landing of a foreign aircraft at any point whatever until its de-

parture the authorities of the State visited shall have, in all cases, the right to visit and examine the aircraft and to verify all documents with which it must be provided, in order to determine that all the laws, rules and regulations of such States and all the provisions of this Convention are complied with.

*Article 21:* The aircraft of a contracting State engaged in international air commerce shall be permitted to discharge passengers and a part of its cargo at one of the airports designated as a port of entry of any other contracting State, and to proceed to any other airport or airports in such State for the purpose of discharging the remaining passengers and portions of such cargo and in like manner to take on passengers and load cargo destined for a foreign State or States, provided that they comply with the legal requirements of the country over which they fly, which legal requirements shall be the same for native and foreign aircraft engaged in international traffic and shall be communicated in due course to the contracting States and to the Pan American Union.

*Article 22:* Each contracting State shall have the right to establish reservations and restrictions in favor of its own national aircraft in regard to the commercial transportation of passengers and merchandise between two or more points in its territory, and to other remunerated aeronautical operations wholly within its territory. Such reservations and restrictions shall be immediately published and communicated to the other contracting States and to the Pan American Union.

*Article 23:* The establishment and operation of airdromes will be regulated by the legislation of each country, equality of treatment being observed.

*Article 24:* The aircraft of one contracting State engaged in international commerce with another contracting State shall not be compelled to pay other or higher charges in airports or airdromes open to the public than would be paid by national aircraft of the State visited, likewise engaged in international commerce.

*Article 25:* So long as a contracting State shall not have established appropriate regulations, the commander of an aircraft shall have rights and duties analogous to those of the captain of a merchant steamer, according to the respective laws of each State.

*Article 26:* The salvage of aircraft lost at sea shall be regulated, in the absence of any agreement to the contrary, by the principles of maritime law.

*Article 27:* The aircraft of all States shall have the right, in cases of danger, to all possible aid.

*Article 28:* Reparations for damages caused to persons or property located in the subjacent territory shall be governed by the laws of each State.

*Article 29:* In case of war the stipulations of the present Convention shall not affect the freedom of action of the contracting States either as belligerents or as neutrals.

*Article 30:* The right of any of the contracting States to enter into any convention or special agreement with any other State or States concerning



international aerial navigation is recognized, so long as such convention or special agreement shall not impair the rights or obligations of any of the States party to this Convention, acquired or imposed herein; provided, however, that two or more States, for reasons of reciprocal convenience and interest may agree upon appropriate regulations pertaining to the operation of aircraft and the fixing of specified routes. These regulations shall in no case prevent the establishment and operation of practicable inter-American aerial lines and terminals. These regulations shall guarantee equality of treatment of the aircraft of each and every one of the contracting States and shall be subject to the same conditions as are set forth in Article V of this Convention with respect to prohibited areas within the territory of a particular State.

Nothing contained in this Convention shall affect the rights and obligations established by existing treaties.

*Article 31:* The contracting States obligate themselves in so far as possible to cooperate in inter-American measures relative to:

a. The centralization and distribution of meteorological information, whether statistical, current or special.

b. The publication of uniform aeronautical charts, as well as the establishment of a uniform system of signals.

c. The use of radio-telegraph in aerial navigation, the establishment of the necessary radio-telegraph stations and the observance of the inter-American and international radio-telegraph regulations or conventions at present existing or which may come into existence.

*Article 32:* The contracting States shall procure as far as possible uniformity of laws and regulations governing aerial navigation. The Pan American Union shall cooperate with the Governments of the contracting States to attain the desired uniformity of laws and regulations for aerial navigation in the States party to this Convention.

Each contracting State shall exchange with every other contracting State within three months after the date of ratification of this Convention copies of its air traffic rules and requirements as to competency for aircraft commanders, pilots, engineers, and other members of the operating crew, and the requirements for airworthiness of aircraft intended to engage in international commerce.

Each contracting State shall deposit with every other State party to this Convention and with the Pan American Union three months prior to the date proposed for their enforcement any additions to or amendments of the regulations referred to in the last preceding paragraph.

*Article 33:* Each contracting State shall deposit its ratification with the Cuban Government which shall thereupon inform the other contracting States. Such ratification shall remain deposited in the archives of the Cuban Government.

*Article 34:* The present Convention will come into force for each signatory State ratifying it in respect to other States which have already ratified, forty days from the date of deposit of its ratification.

*Article 35:* Any State may adhere to this Convention by giving notice thereof to the Cuban Government, and such adherence shall be effective forty days thereafter. The Cuban Government shall inform the other signatory States of such adherence.

*Article 36:* In case of disagreement between two contracting States regarding the interpretation or execution of the present Convention the question shall, on the request of one of the Governments in disagreement, be submitted to arbitration as hereinafter provided. Each of the Governments involved in the disagreement shall choose another Government not interested in the question at issue and the Government so chosen shall arbitrate the dispute. In the event the two arbitrators cannot reach an agreement they shall appoint another disinterested Government as additional arbitrator. If the two arbitrators cannot agree upon the choice of this third Government, each arbitrator shall propose a Government not interested in the dispute and lots shall be drawn between the two Governments proposed. The drawing shall devolve upon the Governing Board of the Pan American Union.

The decision of the arbitrators shall be by majority vote.

*Article 37:* Any contracting State may denounce this Convention at any time by transmitting notification thereof to the Cuban Government which shall communicate it to the other States party to this Convention. Such denunciation shall not take effect until six months after notification thereof to the Cuban Government, and shall take effect only with respect to the State making the denunciation.

In witness whereof, the above named Plenipotentiaries have signed this Convention and the seal of the Sixth International Conference of American States has been hereto affixed.

#### OTHER MEDIUMS OF COMMUNICATION CONSIDERED

Four other matters were adopted by the Committee on Communications, as follows:

##### 1. *Automobiles and Roads*

The Conference recommends that the Second Pan American Congress of Highways, which will meet at Rio de Janeiro in July, 1928, is to draw up a treaty regulating the international traffic in automobiles on the American continent, and also to formulate a uniform traffic law which the states might adopt.

It recommends also the construction of an inter-American highway which it fully approves.

## 2. *Water Communications*

While South America has few good harbors, it has what has been called the most important river system in the world.<sup>71</sup>

The Amazon, the Plata and the Orinoco drain a region of more than 11,000,000 square kilometers. This system serves every country in South America, except Chile. Plans have been made for linking up the three rivers by canals. Despite the international importance of these rivers, international traffic upon them has not yet been given a treaty guarantee. Several treaties guaranteeing navigation rights to states in regard to the River Plata have been made.<sup>72</sup>

In 1902, at the Pan American Conference in Mexico City, seven Latin-American states signed a convention calling for a geographical congress at Rio to study the question of linking up by canals the Amazon, the Plata and the Orinoco. By 1927, the convention had been ratified by only two states. The conference has never been held. At Havana a resolution was introduced asking that the 1902 convention be ratified, but it was withdrawn.<sup>73</sup> Another resolution, also withdrawn, called upon Mexico and Guatemala to construct an international port on the Rio Suchiate, and thus facilitate the completion of the Pan American Railway between both countries.

### RESOLUTIONS ON COMMUNICATIONS ADOPTED AT HAVANA

The Havana Conference adopted a motion asking the governments of countries having navigable rivers to carry on expert studies in regard to the obstacles obstructing navigation and the cost of eliminating these obstacles. Their conclusions should be presented to the next Pan American Conference.

A resolution was passed recommending to the Pan American Union that the International Commission of Jurists, if possible, study the question of regulating the industrial and agricultural use of international rivers and submit a project to the Seventh Conference.

71. Pan American Union, *Special Handbook for Use of Delegates*, p. 72.

72. Hyde, *International Law*, Vol. I, p. 293.

73. *Diario*, p. 446.

In order to promote communications between the American states, the Conference adopted a resolution recommending to the Governing Board of the Pan American Union the convocation of a union of experts to study (1) the most effective means to establish steamship lines connecting all the American countries, and (2) methods of eliminating unnecessary port formalities.

## 3. *Railway Communications*

The idea of linking New York and Buenos Aires with a railway touching the important capitals of the American continent was discussed at the first Pan American Conference in 1889. In the following year, the United States Government established an International Railway Commission to study the matter. A survey for this route was actually made by 1891, and a route laid out which would follow along the summit of the Andes. In 1927, about seventy per cent of the route—the total length of which is 16,300 kilometers—had been completed, twelve nations having constructed their portion of the line. Eight nations have not yet completed their quotas.<sup>74</sup> The uncompleted section—amounting to 4,616 square kilometers—lies in South America. The Pan American Railway Committee, a body of experts selected as a result of the resolution of the Fifth Pan American Conference, declared in April, 1927, that the original route should be abandoned because construction costs were prohibitive and because the traffic drawn to such a route would not be as great as that attracted to other routes. The committee approved a route lying to the east of the Andes summit.<sup>75</sup>

### SUB-COMMITTEE APPOINTED TO STUDY RAILWAY CONVENTIONS

The question of what route to follow was warmly debated at the Havana Conference. A motion was passed resolving to maintain the Andes route; and recommending that the American nations finish their sections. It recommended, however, that the route provided by the Pan American Railway Commission might be constructed as a supplementary line.

74. Remarks of Mr. Denegri, *Diario*, p. 276.

75. Sixth International Conference of American States, *Pan American Railway Committee, report submitted to the Conference*, p. 11.

The question of linking up the railways of the American continent in a smooth working unit was discussed at South American Railway Conferences in 1910 and 1922. A number of treaties have been made in regard to international railway traffic, in some cases providing for freedom of transit.<sup>76</sup> As yet, however, there is no railway agreement for the American continent such as exists in Europe. The Havana Conference passed a resolution to the effect that a sub-committee be appointed to study existing railway conventions with a view to formulating the basis of a general convention.

#### 4. *Electrical Communications*

International cooperation has proved as necessary in the case of electrical communications, such as the radio and telegraph, as in the case of railways. To promote this type of cooperation on the American continent, a Communications Conference attended by fifteen American states convened at Mexico City in 1924, and a convention was signed in regard to the radio and the telegraph. The United States did not sign, however, because the convention purported to regulate inter-American communications "in a manner that interferes with the rights of management inherent in the private ownership of such facilities in the United States."

#### CONFERENCE RECOMMENDS RATIFICATION OF PREVIOUS ELECTRICAL CONVENTIONS

In view of the delay in ratification of the Mexico City convention, the question was placed on the agenda of the Havana Conference. A few months previously an International Radio Conference at Washington, attended by all the American republics except Ecuador, had signed a radio convention—November 25, 1927. In view of the work of these two conferences, the one at Mexico City covering both radio and telegraph, and the one at Washington covering radio, the Havana Conference passed a resolution calling attention to these conventions and recommending that they be promptly considered and ratified by

the states members of the Pan American Union who had signed these conventions.

#### COMMITTEE NO. 6

##### ECONOMIC PROBLEMS

In his opening remarks the chairman of Committee No. VI, dealing with economic problems, stated that economic problems were of the utmost importance to American countries. People in America were struggling to "obtain a real economic independence."<sup>77</sup>

1. *Trade-marks.* Various international agreements have been entered into for the purpose of protecting the trade-marks of business men in one country from being infringed upon in another country. The Convention of Paris of 1883 established an International Trade-Mark Union and laid down the principle of national treatment in regard to trade-marks, *i. e.*, that aliens should be given the same treatment as nationals. The Protocol of Madrid of 1891 established a registration bureau at Berne. A business man wishing to get protection for his trade-mark in a foreign country registers it at Berne and thus secures the desired protection in the countries which have adhered to the Berne Convention. The Convention of Paris of 1883 was signed by the following American states: Brazil, Cuba, the Dominican Republic, Mexico and the United States. The Madrid Protocol was signed by Brazil, Cuba and Mexico.<sup>78</sup>

The First Pan American Conference recommended adherence to the Inter-American Trade-Mark Treaty signed at Montevideo by a number of states. At the Buenos Aires Conference in 1910, a new trade-mark convention was signed providing that the registration of a trade-mark in one state automatically constituted registration in the other states, and establishing two Pan American registration offices, one at Havana and one at Rio de Janeiro. The offices charged a registration fee of fifty dollars.<sup>79</sup>

The Buenos Aires Convention was not ratified by Mexico, El Salvador, Colombia,

77. *Diario*, p. 172.

78. Cf. Strupp, K., *Documents pour Servir à l'Histoire du Droit des Gens*, Vol. II, p. 439.

79. Treaty of August 20, 1910, Malloy, ed. *Treaties and Conventions of the United States*, Vol. III, p. 2935.

76. These are summarized in the Pan American Union, *Special Handbook for the Use of Delegates*, and *Diario*, p. 317.

Venezuela, Argentina or Chile. Other countries such as Guatemala, Honduras, Nicaragua and Costa Rica served notice of denunciation.<sup>80</sup>

In an effort to meet the objections raised against the 1910 agreement, the Fifth Pan American Conference at Santiago signed a new trade-mark convention in 1923. This convention abolished the principle of automatic protection embodied in the 1910 convention. It provided that a person interested in the registration of a trade-mark should present it to one of the two Inter-American Bureaus, paying a fee of \$50. The bureau would then communicate the application to the state concerned which should "determine whether protection can be granted in accordance with its laws." It would then notify the Inter-American Bureau of its decision.<sup>81</sup>

#### DIFFICULTIES CONCERNING REGISTRATION OF TRADE MARKS

The plan did not prove satisfactory to persons desiring protection. In numerous cases the states failed to reply to the communication in regard to registration from the Inter-American Bureau. Applicants had to pay fees to the state in addition to the \$50 to the bureau, making the total in their opinion excessive. Many of them found it more convenient to seek registration directly in each state and not through the medium of the bureau. Moreover, the 1923 convention was not ratified by Brazil, Cuba, the United States, Paraguay, Guatemala, Haiti, the Dominican Republic or Chile. Some states who had ratified the 1910 convention had not ratified the 1923 convention, which made the situation confusing. Less than half of the American states had ratified either the 1910 or the 1923 convention. Since its establishment, the Havana registration office, up to 1919, had registered only 1,251 trade-marks in comparison with a total of 50,034 registrations at Berne.

Several reasons were given for the failure to establish a Pan American trade-mark system. The first was that the United States was the principal country interested in

securing the protection of trade-marks. There were few Latin-American business men who wished to register trade-marks in the United States, but there were hundreds of American business men who wished to register their trade-marks in Latin-America. About 1,100 out of the 1,200 trade-marks registered at the Havana Office have been from the United States.

In a number of Latin-American countries trade-marks from the United States have been pirated. Under the laws of many Latin-American countries registration as such protects a trade-mark and prevents anyone else from using it, even though the person registering it has no bona-fide title to the trade-mark. Thus Mr. X may register the sign "Ford Car" in a Latin-American country, and when the Ford Company enters the country and wishes to use this sign, it cannot, because it is already registered.

Moreover, delegates pointed out that a diplomatic conference was not the place to study a matter as technical as trade-marks.<sup>82</sup> The European trade-mark conventions had been preceded by a series of private conferences of experts.

Finally some delegates did not believe that there was any justification for attempting to maintain a double registration system—a trade-mark system apart from the international bureau at Berne which was already working so successfully.<sup>83</sup> The United States delegation urged, however, that action be taken and that the 1923 convention be strengthened.

#### SPECIAL CONFERENCE ON TRADE MARKS PROPOSED

As a result of the discussion, the Conference adopted a resolution recommending that the Governing Board of the Pan American Union call a special conference of representatives of governments in the Union to study in all its amplitude the problem of the inter-American protection of trade-marks. The conclusions of such a conference should be referred immediately to the governments without the necessity of referring them to the Seventh Pan American Conference.

80. Pan American Union, *Handbook for the Use of Delegates*, p. 108.

81. Convention of April 28, 1923, League of Nations' *Treaty Series*. Vol. XXXIII, p. 64.

82. *Diario*, p. 227.

83. Cf. Part I, p. 79. (F. P. A. Information Service, Vol. IV, No. 4.)



## 2. *Uniformity of Legislation on Consular Fees and the Simplification of Consular Procedure.*

The Conference passed a resolution approving the conclusion of the Pan American Commission for the Simplification and Unification of Consular Procedure, and asked that the Pan American Union convene a second session of the commission for the simplification of procedure to study the question of the uniformity of consular fees.<sup>84</sup>

3. *Immigration.* For the first time in the history of Pan American Conferences, the agenda at the Sixth Conference contained the item, "international aspects of immigration." A large number of Latin-American countries receive immigrants from each other and from Europe, while Latin-American countries send a large number of emigrants to the United States. All residents of American countries are exempt from the quota restrictions of the United States Immigration Act of 1924. In 1927, at least 68,000 Mexicans entered the United States, which is more than a third of the number of Europeans who came in.

At the Havana Conference a sub-committee accepted the suggestion that the immigration question should be postponed until the Second Emigration and Immigration Conference which was to meet in March, 1928.<sup>85</sup> Nevertheless, it was thought desirable to adopt a declaration of principles in regard to immigration which would indicate the position of the American states. The delegation from Ecuador submitted an amendment to the report relative to immigration stating that "the regulation of immigration is a domestic problem,"<sup>86</sup> but it failed of adoption.

Cuba and Santo Domingo also made reservations, but upon different points.<sup>87</sup>

### RESOLUTION

The Sixth International Conference of American States, taking into consideration the fact that there is soon to be held in this city the Second International Conference of Emigration and Immigration

and being desirous not to place difficulty in the way of or limits upon the labors of that Conference; but it also being necessary and indispensable to make certain declarations of principles and some recommendations,

### RESOLVES:

To abstain from studying in its entirety the problem of immigration, but to establish the following principles and to make the following declarations with respect to that problem as indicative of the points of view of the American nations:

1. That conventions on emigration and immigration which are effected between the nations of the American continent and nations of other continents may never impose upon an American State measures tending to withdraw the emigrant from the legislation and jurisdiction of the country in which he becomes incorporated.

2. That all resolutions respecting emigration and immigration be inspired by this double principle:

(a) Equality of civil rights as between nationals and foreigners;

(b) The quality of freeman which should be recognized in every immigrant, the rights and dignity of human beings being respected and protected without, however, this respect and this protection justifying any offense against the sovereignty of the country.

3. That the American States reserve the right to examine the advantages of the entry of the immigration current from other continents into their territories adjusting their procedures to their economic, political and social interests.

4. That without prejudgment there should be recommended to the Second International Conference of Emigration and Immigration for special study the following proposition formulated by the Delegation of Mexico.

FIRST. For the purpose of the protection of the respective laws they shall only be considered as emigrants who without personal funds leave their country to work in another in industrial, commercial, agricultural or intellectual labors in the employ of an individual or an enterprise; and as immigrants those who under equal conditions and for the same purpose arrive at a country not their own.

SECOND. The Governments should not permit the departure of an emigrant unless previously and with its participation the following contracts have been celebrated:

(a) A transportation contract which guarantees to the emigrant his transportation to the point where his services will be utilized, under good conditions of hygiene, alimentation and adequate comfort.

(b) An employment contract which guarantees to the same emigrant the utilization of his services under the conditions stipulated and, especially, the payment of his return passage to the place where the contract was effected.

84. Cf. the Ecuador project in regard to this subject. *Diario*, p. 224.

85. They first met in Rome in 1924 at the invitation of the Italian Government. Buell, R. L. *International Relations*, p. 167.

86. *Diario*, p. 270.

87. The paragraph to which the United States objected was adopted in committee of the Conference by a vote of nine to six. *Diario*, p. 369.

The Governments, in addition to the guarantees stipulated, should dictate the necessary protective measures in favor of the emigrant to the port of entry of the country to which he migrates; and in favor of the immigrant from the port of entry to the place established in the employment contract.

THIRD. The immigrant should enjoy the same legal rights and guarantees as the resident in the country into which he enters, with the exception of the political rights which each nation grants its nationals, without it being possible ever to dictate measures of any kind which tend to place the immigrant in a situation legally or in fact inferior to that of the nationals.

The Government of the country to which the emigrant arrives should fulfill, through the means established by its laws, the contracts of transportation and employment to which the second paragraph refers, when the emigrant so requests.

5. That without prejudgment it be recommended to the Governing Board of the Pan American Union that it include as a subject of the program of the next International Conference of American States and that it prepare, pending the holding of that Conference, the necessary material for the best consideration of the problem, the following proposal by the Delegation of El Salvador:

"No one of the American States may place obstacles in the way of the emigration and immigration of the other American States nor limit it to a determined number of citizens of another American State."

*Declaration of the Delegation of the United States of America.*

"The Delegation of the United States desires in connection with this resolution to state that the Government of the United States considers that the control of immigration is a matter of purely domestic concern, representing the exercise of a sovereign right and that, as far as the United States of America is concerned, the authority of its Congress in immigration matters is exclusive."

#### 4. Chambers of Commerce

The agenda included an item calling for a Conference of Chambers of Commerce and the organization of an Inter-American Chamber of Commerce. The Conference merely recommended that the Fourth Commercial Congress study the most effective way of increasing the relations between the commercial organizations of the members of the Pan American Union.

#### 5. Statistics

The Conference recommended that a committee of experts prepare an inter-American convention on statistics of maritime, river, land and air communication.<sup>88</sup>

88. This problem had been studied at a Conference on Uniformity of Communication Statistics in Lima, December, 1924.

#### 6. Standardization

In December, 1924, a Pan American Standardization Conference was held in Lima, Peru. It adopted resolutions recommending the establishment of common types and nomenclature, uniform standards relative to quality and uniformity in the specifications of raw materials and industrial products. As a result of this conference, the Inter-American High Commission drafted a Convention for the Establishment of Uniform Specifications and Common Nomenclatures. A second Conference on Standardization met in Washington in May, 1927, at which papers on the standardization of cacao, cereals, coffee, fruits, hides and skins, and the like were read.<sup>89</sup> The Havana Conference passed resolutions on this general subject as follows:

a. Recommending that the Inter-American High Commission get in touch with importers' and consumers' organizations in the United States who use Latin-American products to obtain data on the form in which these products would be most acceptable.

b. Urging the introduction of the metric system in those countries where it is not in use, so as to carry into effect the Convention on Uniformity of Specifications of 1924.<sup>90</sup>

c. Recommending the study of the adoption of a common money. The Pan American Union should draw up a definite project to be submitted to the Seventh Conference.

#### 7. Conference on Sanitary Vegetable and Animal Control

While the item was not on the original agenda, delegates raised the question of the embargoes and quarantines imposed by certain states for sanitary reasons upon imports from other states.<sup>91</sup> In some cases these embargoes were not imposed until after the goods had been shipped, and, in other cases, inspection at the point of origin might have saved many inconveniences.<sup>92</sup>

In order to work out some system of reducing these grievances, the Conference

89. Inter-American High Commission, *Report on the Second Pan American Standardization Conference*.

90. The Conference also recommended that the states already following the metric system accept as a new unit the "Metric Hectare," the equivalent of 10,000 cubic metres, a unit which will be useful in measuring volumes of water for irrigation purposes.

91. For Argentina's complaint against the United States see F. P. A. *Information Service*, Vol. III, No. 17, p. 255.

92. For the tariff question at Havana, see Part I, p. 57. (F. P. A. *Information Service*, Vol. 4, No. 4.)

adopted a resolution, suggested by Mexico, proposing that a conference be called in January, 1929, if possible, to bring about uniformity and cooperation in quarantines and in the regulations in regard to contaminated products. Such a conference should also plan a convention establishing an Inter-American Council of Agricultural Defense which will continuously study the quarantine question.<sup>93</sup>

#### 8. *Agriculture*

In order to promote agriculture on the American continent the Conference asked the Pan American Union (1) to obtain consideration for a plan to establish a permanent commission in the Pan American Union to work out a plan of inter-American cooperation for the study of American agricultural problems, and (2) to authorize a Pan American agricultural conference. The text of the resolution is as follows:

##### RESOLUTION

The Sixth International Conference of American States

##### RESOLVES:

To send to the Pan American Union the Report of the Sixth Committee, on Continental Agricultural Cooperation, with copies of the propositions on which it is based to the end that the Union may take them into consideration sending them for study to the Seventh International Conference of American States, to a committee of experts, to the next Commercial Congress or handle in any other manner deemed appropriate:

##### I.

1. To establish, in the Pan American Union, a Permanent Commission which shall lend its technical services in the development of a plan of inter-American cooperation for the study of the problems related to agriculture, forestry, animal industry and prevention and destruction of the plagues and diseases affecting animals or plants, as well as their products, in the countries members of the Union.

2. Provision will be made for the expenses occasioned by the maintenance of the Commission in the same manner as that established for the maintenance of the Pan American Union and in conformity with a budget approved by the Governing Board.

3. The Governing Board shall name the members of the Commission, taking into consideration, in making the appointments, that the different geographical sections of America should be represented.

4. The Commission shall meet in the place fixed by the Governing Board.

<sup>93.</sup> *Diario*, p. 320.

5. The annual program of work shall be submitted by the Commission to the Governing Board of the Pan American Union, which shall have power to make any modifications it may judge advisable.

6. The Governments members of the Union may ask the Commission for reports on the questions that are within the scope of its work, and should communicate to said Commission not only the measures adopted by official organizations but also, as far as possible, those employed by national or foreign entities domiciled in their territory.

7. A fund shall be established for the development of the labors of investigation of the Commission. Said fund shall be raised by means of assignments, subventions and donations made by the Governments members of the Union, the associations of farmers and breeders, scientific organizations and private persons interested in the progress of the sciences. The Governing Board of the Pan American Union shall promote the raising of the fund and shall establish the rules for its administration.

8. The Governing Board of the Pan American Union may at the request of an interested Government member of the Union entrust to the Commission the study of any concrete case which may have arisen within the territory of the country, and request a report, on plagues, quarantines, et cetera, as well as its technical opinion on the matter.

##### II.

To entrust to the Governing Board of the Pan American Union the convocation of an Inter-American Conference on Tropical Agriculture, Forestry, and Animal Industry, to be composed of experts named by the respective Governments, for the purpose of establishing the bases of a plan for effective continental cooperation for the development of those industries and the close connection between the official and private organizations in these branches of production. Representatives of private organizations of the agricultural, forestal and animal industries shall be invited to this Conference in an advisory capacity.

The results of the labors of the Conference shall be submitted to the Governing Board of the Pan American Union. The Governing Board shall fix the place and the date of the meeting of the Conference and shall prepare its program.

##### III.

To recommend to the American Governments that they lend effective cooperation to the establishment of courses of Agriculture, Forestry, and Animal Industry in the Pan American University founded in Panama in accordance with the resolution of the Pan American Scientific Congress, and it also recommends to the universities and the agricultural schools of the American countries the establishment of an interchange of professors and students with the Pan American University at Panama, especially with regard to Agriculture, Tropical Forestry and Animal Industry.



### COMMITTEE NO. 5—INTELLECTUAL COOPERATION

#### 1. *Pan American Institute of Geography and History*

The first achievement in regard to intellectual cooperation was the adoption of a project establishing the Pan American Institute of Geography and History.<sup>94</sup> It is the purpose of this institute to initiate, coordinate and distribute geographic and historic studies in the American states. Upon the request of the countries directly interested, it will undertake studies of boundary questions. The site of the institute is to be selected by the Pan American Union.

#### 2. *Pan American Institute of Intellectual Cooperation*

Following the example of the League of Nations in establishing an International Institute of Intellectual Cooperation at Paris, the Havana Conference passed a resolution creating an Inter-American Institute of Intellectual Cooperation.<sup>95</sup> Its immediate end is (1) to arrange the exchange of professors and students between different American countries, (2) to encourage in the secondary and superior schools of the American countries the creation of special chairs of history, geography, literature, sociology, hygiene and law (principally constitutional and commercial) of all the signatory states, (3) to promote the creation of a "University City or Student House" in American countries.

A congress of deans, principals, and other educators, to be called by the Pan American Union, will fix the seat of the Institute. Meanwhile the Pan American Union will encourage the establishment of scholarships and special chairs, subsidized by governments, for the study of Spanish, English, Portuguese and French, and also for the study of commercial legislation and the history of the relations of the American republics.

#### 3. *Convention on Intellectual Property*

In 1910 a convention designed to protect

copyrights of literary and artistic works throughout the American continent was signed at Buenos Aires.<sup>96</sup> While this convention worked fairly satisfactorily in so far as authors were concerned, it did not cover moving picture films and phonograph records, which have recently become of great importance in international trade. The Havana Conference amended the Buenos Aires convention by extending protection to lithographic and cinematographic works, phonographs, etc., and "applied arts of whatever human activity." The duration of the protection extends during the life of the author and thereafter for fifty years.

#### 4. *Journalism*

a. The Conference passed a resolution recommending periodic Pan American conferences of journalists,<sup>97</sup> and study by the Conference of practical means of increasing inter-American news in the daily press.

b. A second resolution asked the next conference of journalists to discuss the prohibition of the publication of false, deceitful or exaggerated news which tends to prejudice the good name or the interest of any country of America,<sup>98</sup> forming a false conception of its institutions or its customs, and creating an indecorous reputation in the rest of the world.

It also recommended that the great Pan American publications establish in each country correspondents knowing the history, language, legislation and customs of the country. It recommended frequent visits of journalists from one country to another, and the establishment of schools of journalism.

c. A third resolution recognized journalism as a "public function" and recommended the enactment of legislation providing pensions for journalists and other newspaper workers, to be paid for by the governments, press, beneficiaries, and special gifts.

#### 5. *Motion Pictures*

A resolution was passed recommending that the American governments exercise

94. Mexico and Cuba initiated this project. *Diario*, p. 85.

95. At the second session of the Committee on Intellectual Cooperation the President announced that he had received a "cordial message" from the Institute of Intellectual Cooperation of Paris, "founded under the protection of the League of Nations, and which did not recognize frontiers either between nations or continents." The President added that for Latin-Americans the Institute "offered the attraction of having its seat in Europe, in Paris, with which we remain tied as the original source of our culture." The Committee drafted a reply to the letter from the Paris Institute. *Diario*, p. 167.

96. Conventions of August 11, 1910, Malloy, ed. *Treaties, Conventions, etc., of the United States*, Vol. III, p. 2925.

97. Cf. Sixth International Conference of American States, *Resolutions of the First Pan American Congress of Journalists*.

98. This resolution, according to Dr. James Brown Scott, was "of Mexican origin," and doubtless due to the publication of false documents in the United States during 1927, which "gravely reflected upon Mexico and its authorities." Scott, J. B., *The Sixth International Conference of American States*, ("International Conciliations," No. 241, June, 1928.)



great vigilance in the production and exhibition of moving pictures in order to avoid the distribution or showing of pictures which, either because of inexactness in the presentation of the national character and customs of any of the American countries, or because of its intentionally prejudicial character, may offend the public sentiment of the country in question.

#### 6. *Instruction in Political Economy*

The Conference also recommended that the American countries in their primary instruction teach the rudiments of finance, of political and social economy and of other subjects which may give an idea to the student of the constitutional basis of the state.

#### 7. *Spanish Dictionary*

The Conference authorized the publication of 1,200 copies of the Spanish dictionary composed by Don Rufino J. Cuervo. The governments of Argentina, Colombia, Chile, Cuba, Mexico and Peru will contribute the sum of \$3,000 each; and Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, the Dominican Republic, Uruguay and Venezuela will contribute \$2,000 each, making a total of \$42,000. The Pan American Union is also authorized to receive private contributions from the United States, Brazil and Haiti.

#### 8. *Pan American Pedagogical Congress*

The Conference authorized the Pan American Union to call a Pedagogical Conference composed of representatives of normal schools and superior primary schools of the American states to study the status of education, reforms which should be adopted, and the exchange of professors and students.

#### 9. *Bibliography, Maps, Book-post*

a. The Conference authorizes the appointment of a commission of experts to prepare a bibliography of the American continent.

b. It authorizes the publication of geodetic, geologic and other maps, giving an idea of the natural resources of the American continent.

c. It recommends that books be handled more quickly by the postal services; that the signatories of the Convention of Stockholm reduce the general tariff on books by fifty per cent; that steps be taken to abolish post-

age on magazines of an American country circulating in another; and that the tariff duties on books should be suppressed or reduced.<sup>99</sup>

#### COMMITTEE NO. 7—HYGIENE AND SOCIAL PROBLEMS

The question of inter-American cooperation in health, such as the notification of disease and the control of quarantines, has been discussed by Pan American Conferences for a long time. In addition, eight Pan American Sanitary Conferences of experts have been held. The seventh conference, which met at Havana in 1924, drew up a Pan American Sanitary Code which Surgeon-General Hugh S. Cumming has described as "perhaps the most important sanitary treaty ever negotiated between nations." This code aims to prevent the spread of infections and promote cooperation in preventing the introduction of disease. A Pan American Sanitary Bureau publishes a monthly bulletin in Spanish and a bi-monthly bulletin in Portuguese devoted to the problems of health and sanitation. The bureau also answers requests for information from the health departments of the American republics.

At Havana, health matters were referred to Committee No. 7 on Social Problems. This committee held only five sessions, a smaller number than any of the main committees except Committee No. 8.

##### 1. *Pan American Sanitary Code.*

The Havana Conference adopted a resolution urging those countries which had not done so to ratify the Pan American Sanitary Code.

##### 2. *Resolution on Hygiene.*

The Conference recommended that the governments send to future Pan American Conferences technical advisers and also reports on the progress realized in hygiene in their respective countries; that they establish a corps of sanitary visiting nurses in each country; and increase the exchange of hygiene and health experts.

<sup>99</sup> A resolution was introduced recommending that the Pan American Union compile and publish all treaties, conventions, protocols and understandings in force between American states, either referring to inter-American states or relating to non-American states. *Diario*, p. 187. It seems to have been embodied in a modified form in Article VI (2) of the Pan American Union Convention.

### 3. *Red Cross*

The Conference called the attention of the governments to the importance of the work of the Red Cross in time of peace and recommended that governments give an "effective support" to these societies. They asked the governments to support the Third Pan American Conference of the Red Cross which will be held in Rio de Janeiro.

### 4. *Conferences on Public Health*

The Havana Conference took note of the conclusions of the First Pan American Conference of National Directors of Health which met in Washington in 1926. It recommended that future conferences of directors of health deal with the exchange of ideas and expenses relative to public hygiene.<sup>100</sup>

### 5. *Public Health Personnel*

The Conference recommended that to obtain a personnel for the efficient functioning of the sanitary services, the governments establish special schools for sanitary instruction, and constitute a regular corps of sanitary officials.

### 6. *Conference on Eugenics and Homiculture*

The Havana Conference took note of the acts of the first conference on this subject held at Havana, in December, 1927. It charged the Ninth Sanitary Conference and the Second Eugenics Conference with the duty of harmonizing the functions of the Pan American Eugenics Office and the Sanitary Office. It also recommended that those republics which did not possess technical representatives for the study of immigration in the country of origin should make use of experts of other countries having a sufficient number.

### 7. *Labor*

a. The Conference recommended the inclusion on the agenda of future Pan American Conferences of the study and resolution of the problems relative to the material improvement of laborers of the countries of the American continent.

b. It also recommended the passage of legislation providing for the obligatory rest of a mother, forty days before and after

child-birth, with the integral enjoyment of wages during the period.

### COMMITTEE NO. 8—PROGRESS OF PAST CONVENTIONS AND RESOLUTIONS

The purpose of Committee No. 8 was to compile information as to the extent to which the treaties, conventions and resolutions of past Pan American Conferences had been carried into effect.<sup>101</sup>

The committee summarized the ratifications to the Convention to Prevent Conflict between American States, signed in 1923 at the Fifth Conference. Resolutions of past Conferences have been ratified by Brazil, Chile, Cuba, the United States, Guatemala, Haiti, Paraguay, and Venezuela, and adhered to by the Government of Mexico—a total of nine states.

The 1923 Trade-Mark Convention has been ratified by Brazil, Cuba, the United States, Guatemala, Haiti, Paraguay and the Dominican Republic—a total of seven states. (The United States made a reservation in signing, requiring a detailed record of the applications to be kept.)

The 1923 Convention for the Publicity of Customs Documents has been ratified by Brazil, Costa Rica, Cuba, El Salvador, the United States, Guatemala, Haiti, Paraguay, and the Dominican Republic—a total of nine states.

The 1923 Convention on the Uniformity of Nomenclature for the classification of merchandise has been ratified by Brazil, Costa Rica, Cuba, El Salvador, Dominican Republic, the United States, Guatemala, Haiti and Paraguay—a total of nine states.

In accordance with the resolution of the Pan American Conference at Santiago ten technical conferences have been held between 1924 and 1927. They are as follows:

1. First Conference of Eugenics and Homiculture, Havana, December, 1927
2. First Conference of Highways, Buenos Aires, October, 1925
3. Inter-American Commission of Commercial Aviation, Washington, May, 1927

<sup>100</sup>. Sixth International Conference of American States, *Conclusions of the First Pan American Conference of National Directors of Public Health*.

<sup>101</sup>. *Diario*, p. 476.

4. Inter-American Commission of Electrical Communications, Mexico City, May, 1924
5. First Conference on Uniformity of Specifications, Lima, 1924-25
6. Second Conference on Uniformity of Specifications, Washington, May, 1927
7. Pan American Conference of Red Cross Societies, Buenos Aires, 1923
8. Second Pan American Conference of Red Cross Societies, Washington, 1926
9. Pan American Conference of Journalists, Washington, April, 1926
10. International Commission of Jurists, Rio de Janeiro, April, 1927

The report also reviewed the extent to which other resolutions of the 1923 Conference had been carried out.

The Havana Conference passed a resolution inviting the governments to study the resolutions approved in the five preceding Conferences, and to inform the next Conference of the reasons why they had not been carried into effect.

#### MISCELLANEOUS RESOLUTIONS AT HAVANA

##### 1. *Simplification of the Calendar*

The Conference recommended that each country name a national committee to study the proposed simplification of the calendar, with a view to participation in an international conference on the subject.

##### 2. *Congress of Municipalities*

The Conference resolved that the first Pan American Congress of Municipalities should

take place in Havana during 1931. Mayors of cities of more than 50,000 inhabitants, as well as political and technical municipal organizations, etc., should be invited to attend. A preliminary meeting should be held in Boston during 1930.

##### 3. *Diplomatic Schools*

The Conference recommended the creation of diplomatic and consular institutes, seminaries or schools in which subjects suitable for diplomatic or consular careers could be taught, for the purpose of acquiring the greatest possible uniformity in legislation and requirements for entrance to the foreign service.

##### 4. *Preparatory Studies*

Impressed by the lack of technical studies in connection with a number of items on the agenda, the Conference recommended that for the future conferences the Pan American Union prepare technical studies and submit proposals to serve as the basis of discussion.

##### 5. *Resolutions of Esteem*

Resolutions of esteem were passed in memory of William Sherwell, former secretary of the Inter-American High Commission, of President Woodrow Wilson, "apostle of peace and international justice," to Presidents Coolidge and Machado, to Dr. Carlos J. Finalay of Havana for his work in connection with yellow fever, and to Dr. Alejandro Alvarez of Chile for his work in the "labor of scientific reconstruction of international law."

---

NOTE: For a List of References, see F. P. A. *Information Service*, Vol. IV, No. 4, "The Sixth Pan American Conference."

## A PERMANENT RECORD OF INTERNATIONAL AFFAIRS

### *Bound Copies of Volume III of the F. P. A. Information Service*

*What was M. Briand's proposal to the American people, and when was it made?*

*When did American marines first go to Nicaragua?*

*What is Japan's policy toward China?*

The answers to these and hundreds of other questions on international affairs are found in the new bound volume of the *Information Service*. Volume III is made up of the thirty reports published from March, 1927 to March, 1928. Cross-indexed for ready reference, this Volume on your library shelves will prove indispensable as a background of information. Only a limited number of copies are being prepared.

To Members of the F. P. A.	-	-	-	-	-	-	-	\$4.00
To Non-Members	-	-	-	-	-	-	-	6.00

### *A Current File of the F. P. A. Information Service*

A constantly increasing number of subscribers are preserving their current reports for future reference, using the special loose-leaf binders supplied by the Foreign Policy Association at \$1.25 each, postpaid.

#### *Recent Reports Include:*

EGYPTIAN NATIONALISM AND BRITISH IMPERIAL INTERESTS  
THE SIXTH PAN AMERICAN CONFERENCE, PART I  
POLITICAL AND FINANCIAL BACKGROUND OF THE FRENCH ELECTIONS  
FOREIGN DEBTS AND AMERICA'S BALANCE OF TRADE  
BACKGROUND OF THE GERMAN ELECTIONS  
RECENT JAPANESE POLICY IN CHINA  
THE LEAGUE OF NATIONS AND OUTLAWRY OF WAR  
THE UNITED STATES AND THE NICARAGUA CANAL

#### *Special Supplements:*

AMERICA, THE WORLD'S BANKER, by Dr. Max Winkler  
THE UNITED STATES AND LATIN AMERICA, by Raymond Leslie Buell  
THE ASCENDENCY OF THE DOLLAR, by Dr. Max Winkler

#### *Subscription Rates:*

*F. P. A. Members	-	-	-	-	-	-	-	\$3.00
Non-Members	-	-	-	-	-	-	-	5.00

*(Subscribers receive twenty-six Reports a year together with the Special Supplements)*

\*Membership in the Foreign Policy Association, \$5.00 a year.

FOREIGN POLICY ASSOCIATION

18 EAST 41ST STREET

NEW YORK CITY